NOMINATIONS

HEARING

BEFORE THE

COMMITTEE ON
LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

JAMES B. WYNGAARDEN, OF NORTH CAROLINA, TO BE DIRECTOR OF THE NATIONAL INSTITUTES OF HEALTH

AND

~~HAROLD R. DeMOSS~~; JR., OF TEXAS, ~~CLARENCE V. McKEE~~, OF THE DISTRICT OF COLUMBIA, ~~HOWARD H. DANA, JR.~~, OF MAINE, ~~WILLIAM J. OLSON~~, OF VIRGINIA, ~~GEORGE E. PARA~~S, OF CALIFORNIA, ~~ROBERT S. STUBBS, II~~, OF GEORGIA, ~~MARK SANDSTROM~~, OF CALIFORNIA, AND ~~WILLIAM L. EARL~~, OF FLORIDA, TO BE MEMBERS OF THE BOARD OF DIRECTORS, LEGAL SERVICES CORPORATION

APRIL 21, 1982

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NOMINATIONS

WEDNESDAY, APRIL 21, 1982

U.S. Senate,
Committee on Labor and Human Resources,
Washington, D.C.

The committee met, pursuant to notice, at 9:45 a.m., in room 4232, Dirksen Senate Office Building, Senator Orrin G. Hatch (chairman of the committee) presiding.

Present: Senators Hatch, Quayle, East, Kennedy, Pell, Eagleton, and Metzenbaum.

Opening Statement of Senator Hatch

The Chairman. We are here today to consider the nomination of Dr. James B. Wyngaarden as Director of the National Institutes of Health. Dr. Wyngaarden brings to this position the advantage of many years in biochemical and biomedical research, as well as involvement in the practical applications of basic research. A 1948 graduate of the University of Michigan Medical School, Dr. Wyngaarden spent 4 years at the Massachusetts General Hospital, and from there became a visiting investigator for the Public Health Service of the City of New York.

His involvement with NIH began in 1953 as an investigator in the Laboratory of Chemical Pharmacology at the National Heart Institute and later as a clinical investigator at the National Institute of Arthritis and Metabolic Diseases.

Dr. Wyngaarden has long been involved in teaching. In 1954, he was appointed clinical instructor at George Washington University. From 1956 to 1965 he was at Duke University Medical Center in Durham, N.C., where he became professor of medicine and associate professor of biochemistry. Dr. Wyngaarden interrupted his service at Duke to spend 2 years as a Frank Wistar Thomas professor, and chairman of the department of medicine, and professor of biochemistry, at the University of Pennsylvania in Philadelphia. He returned to Duke in 1967 as chairman of the department of medicine. He has remained in this position for the past 15 years, demonstrating remarkable commitment and leadership to this prestigious medical school.

Dr. Wyngaarden has authored many scientific articles and textbooks, even while serving in his many taxing administrative positions, further demonstrating his commitment to research and education. His awards for distinguished achievement and service indicate his dedication to the study and improvement of our Nation's health care. This commitment is essential for the director of our country's largest health and disease research center, NIH.

NIH, through its separate Institutes and the National Library of Medicine and extramural program is clearly the world leader in biomedical research and the dissemination of medical information. To maintain this success and to meet the challenges of the future will require capable and innovative leadership. It is my belief that Dr. Wyngaarden possesses the administrative skills required to manage the extraordinarily complex activities and business of the National Institutes of Health and also provides the insight and leadership needed to continue the primary mission of the NIH—that is, conducting research to prevent, cure, and treat disease.

Dr. Wyngaarden, I think you can tell that I, personally, am pleased with your nomination. The committee looks forward to hearing from you today regarding your past work, future goals, and the direction you would like to lead the NIH. We will be happy to take your statement at this time.

Senator Kennedy would like to be here. He is coming from New York on the 8:30 shuttle. If you and I finish before the Senator gets here, we will recess any further questions or comment until he does; we will probably start the next hearing, on the National Legal Services Corporation; and then, when he gets here, put you back on. If you will understand that little variance this morning, we will appreciate it. We like to accommodate our ranking minority member, and we always try to do so.

At this point we will place in the record the statements of Senators East, Kennedy, Eagleton, and Hawkins.

STATEMENT OF HON. JOHN P. EAST, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator EAST. Mr. Chairman, I fully support the administration's proposals to 0-fund the Legal Services Corporation. Economic realities are bringing Congressmen truly concerned about the continued well-being of our country to the conclusion that the Federal Treasury lacks unlimited resources. The economic problems facing the country today are the result of the big spending practices by previous administrations. Too many of our citizens are today unemployed because past Congresses have charted a politically expedient course by expanding the Federal funding of services far beyond those areas that are truly essential to sustain the needy. To achieve economic recovery we must preserve the President's tax program and initiate additional reductions in Federal spending. These are the economic facts of life.

Beyond these considerations, the current system under which the Legal Services Corporation operates is subject to the abuse of politicalization. Legal service attorneys are quaranteed a constant source of income by the Federal Government. They do not need any of their clients in order to receive their salary. Legal Services attorneys are thus able to give their own priority to the types of cases they bring to court. Instead of a client with a particular case seeking an attorney, under the present system a legal service attorney with his own personal ax to grind can go out and find a client suitable to fit the requirements of his own personal agenda.

There is no doubt that Legal Services attorneys have used funds to assist their clients in areas such as family law, landlord-tenant, and consumer cases. However, the Congressional Record has been flooded with evidence concerning the long list of politically motivated cases initiated by Legal Services attorneys.

Mr. Chairman, I do not object to the right of any American to have his day in court, whatever his purposes for being there. What I would question is the Government subsidization of such activity.

Mr. Chairman, I do believe that there are many Americans who should receive free legal assistance. I came to this conclusion not as a Senator, but as an attorney. Prior to the existence of the Corporation, those in the profession considered it part of their professional duty to provide a set amount of pro bono work each year. The Legal Services Corporation is another example of the Government assuming an individual moral obligation that more properly belongs in the private sector. Instead of seeking a Government subsidy for the profession, the American Bar Association should instead be lobbying State bar associations to make a reasonable amount of pro bono work a condition to practice law.

There are other alternatives to the Corporation system that would in fact increase the quality of legal representation now available to the Corporation's clients. H.R. 3929 would provide significant tax incentives for attorneys doing pro bono work. Since all attorneys would benefit financially under this program, individual indigents would have greater discretion to select an attorney of their choice. This would increase the quality of representation for current clients of the Corporation since most Legal Services attorneys are fresh from law school and lack experience in all areas of legal practice.

There are still other alternatives to the Legal Services Corporation. Many legitimate cases involving Corporation clients involve a relatively small amount in controversy. Most States already have small claims courts for such cases. In such cases an attorney is neither required and in some circumstances precluded from appearing. States could authorize the award of attorneys fees in cases where the prevailing party is determined to be an indigent. In addition, in civil cases where a large money judgement is possible, indigents presently can retain an attorney on a contingency basis.

Mr. Chairman, there has been a change of administrations in Washington. Some people still refuse to acknowledge this fact. This President is entitled to appoint to positions individuals willing to support his policies. The President does not presently have the political support to abolish the Corporation, but he is entitled to have as his appointees, people who will carry out this policy when the political climate changes on this issue. I suggest that there is no legitimate and responsible basis to reject any of these nominees if they each testify that they will administer the Corporation as required by statute so long as that Corporation continues to exist.

Mr. Chairman, I wish to submit to each of the nominees several written questions and ask that they return their answers to the committee for inclusion into this record.

STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator **KENNEDY**. We are here today to review seven of the nominations that have been made by President Reagan to the Board of Directors of the Legal Services Corporation. First, I would like to take this opportunity to apologize to the nominees and public witnesses for the inconvenience caused during this committee's attempt to hold hearings last month. While the confusion was unfortunate, I think the concern expressed by so many members of this committee in attending that hearing emphasized to all the importance we place on these nominations.

These nominees have a fine example to uphold. Their predecessors on the board, under Chairmen Cramton, Rodham, and McCalpin, have made a profound contribution to the cause of justice in our country. If I could digress for a moment, I would like to commend my good friend, Dan Bradley, for his tireless efforts on behalf of the Corporation and its clients during his service as President of the Corporation. Dan had a tough job. Thanks to his hard work, his term was marked by many successes. I intend no criticism of the new board nor of Dan's eventual replacement when I say that Dan Bradley will be sorely missed.

It is unnecessary to dwell at length on the importance of the Legal Services Corporation. This committee has discussed the Corporation a number of times over the past year. It has also been debated extensively on the Senate floor. Let me simply reiterate the importance, in our increasingly litigious society, for all Americans—rich or poor, privileged or underprivileged—to have access to adequate legal representation. The Legal Services Corporation permits the concept of equal justice under the law to be a real principle rather than simply a hollow phrase.

Since the Legal Services Corporation was created in 1974 and the first set of Directors was nominated in 1975, this committee has recognized the importance of its review of the board nominations. The members of the board do not function as advisers or aides to the President, but rather serve as the policymakers directing an independent Federal nonprofit corporation. I am confident that this group of nominees will also receive a searching but fair scrutiny.

The 1974 Senate report accompanying the Legal Services Corporation act discussed in some detail the qualifications for members of the Board of Directors. The report outlined three primary criteria: One, that the Board should adequately represent the organized bar, Legal Services attorneys, the general public, and eligible clients; Two, that the Board members should be committed to the Corporation's political independence; and Three, that the Board members support the underlying principle of the legislation that the poor should have full access under law to comprehensive and effective legal services.

In looking at these seven nominees, I must confess some serious concern about compliance with the first criteria—the composition of the Board. Among these individuals, I see no clients and little experience in providing legal services to the poor. I do not intend this as a criticism of any individual nominee. However, I cannot help but wonder whether these nominees adequately represent the organized bar, Legal Services attorneys, the general public, and eligible clients.

I am also most disturbed by the sequence of events leading up to these nomination hearings and their implication on the political independence of the Corporation. Six of the slots on the Board had been vacant for 18 months prior to President Reagan's announcement of recess appointments. The other five had been vacant for 6 months prior to his announcement. The fact that President Reagan chose to wait for the 1 month recess between our first and second sessions is most curious. I certainly hope that the President did not delay making his choice in an attempt to deny the Senate the involvement in the selection of Board members mandated by the LSC Act.

The new recess appointees almost immediately held a questionably legal meeting by teleconference on New Year's Eve. This was followed by a surprisingly long delay between the issuance of the recess appointments and the transmission of nine of the nominations. The 10th nomination was delayed even longer—it was received only on Monday of this week. This pattern of precipitous actions and long delays is most puzzling. Given the explicit nonpolitical nature of the Legal Services Corporation as mandated by the legislation, I hope that none of these actions were motivated by partisan politics. I would certainly expect the Reagan administration to understand the nature of the Corporation and the mandate of the act sufficiently to refrain from attempting to undermine the political independence of the LSC.

Let me conclude by again emphasizing that basic principle of our system of justice—the principle of equality before the law. The legislation creating the Legal Services Corporation was not enough to insure that this principle is true for the poor as well as the rich of our Nation. Without a strong and active Legal Services Corporation, the principle of equality before the law will be a mere mockery for the poor of our Nation. Only the Board of Directors of the Corporation can insure that the legislation is implemented effectively and beneficially.

STATEMENT OF HON. THOMAS F. EAGLETON, A U.S. SENATOR FROM THE STATE OF MISSOURI

Senator EAGLETON. Mr. Chairman, as some members of this committee will recall, the road to establishing the Legal Services Corporation was long and arduous. Almost from the very inception of Federal funding for legal services in 1965, the necessity of insulating legal services from the political process became apparent. Legislative amendments proposed to prohibit lawsuits against State, local, and Federal agencies, provisions which give Governors final veto power over specific grants in their States, and administrative efforts to turn over the program to political appointees, illustrated the urgency of independent legal services, and led to several studies to determine a proper structure to insure the legal services program's integrity, survival, and effectiveness. The ABA, President Nixon's Advisory Council on Executive Organization (the ASH Commission), and the National Advisory Committee on the Legal Services Program, each concluded that a private entity, independent from the Government, should be established. The National Advisory Committee, which included then-Attorney General Mitchell and HEW Secretary Richardson, stated the justification for independence as follows:

> The integrity of the lawyer-client relationship must be preserved free of interference by outside sources. Particularly, this means freedom from political pressure and conflicting governmental policies which detract from the lawyer's duty of absolute fidelity to his client. This can probably best be attained by establishing a structure independent of any federal, state, or local governmental department or agency.

In response to these recommendations, President Nixon proposed such an independent legal services body, and Congress enacted the Legal Services Corporation Act of 1974, establishing a private nonmembership, nonprofit corporation for the delivery of legal services, to be governed by an 11-member Board appointed by the President.

In structuring the 1974 act, Congress took great care to establish a corporation that was in fact independent, and bound by the specific terms of the act.

This committee's report carefully spelled out the criteria which should guide our consideration of the qualifications of nominees to the Legal Services Corporation Board: One, a Board membership which is adequately representative of the organized bar, legal education, legal services attorneys, the client community, and organizations involved in the development of legal assistance for the poor; two, the selection of persons who are committed to the Corporation's freedom from political control; and three, the assurance that the Board members understand and are fully committed to the role of legal assistance attorneys and support the underlying principle of this legislation that it is in the national interest that the poor have full access under the law to comprehensive and effective legal services.

The 10-nominee slate before the committee, composed of eight white male attorneys, one minority male attorney, and one female nonlawyer, appears to have obvious deficiencies when weighed against those criteria. Among them, there is not one eligible client, as defined by Corporation regulations. Among them, there is no representative of organizations involved in the development of legal services programs. Among them, there is no representative of legal services attorneys.

Finally, Mr. Chairman, it is my view that this committee can take no action on any nominations to the Legal Services Corporation Board until the committee has had an opportunity to hear from all the nominees and to review fully the overall composition of the Board with respect to its membership qualifications. Certainly, the 10 nominations which have been submitted to date do not satisfy the Board composition requirements as stated in the act.

STATEMENT OF HON. PAULA HAWKINS, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator HAWKINS. Mr. Chairman, I am sorry that I was unable to attend today's hearings to introduce Mr. William Earl of Miami, Fla., who has been nominated by President Reagan to serve as a Director of the Legal Services Corporation. As we all know, the future of the Legal Services Corporation is tenuous. It has been operating without authorization since 1980, and the President has recommended that the Corporation not be reauthorized and that funding for this service be provided through the Social and Community Services block grant.

I, too, question whether the Legal Services Corporation should be reauthorized. It has strayed far from its original purpose of providing legal assistance to the indigent. Instead, taxpayers funds are used to finance efforts by social reformers. I believe the Legal Services Corporation should only represent real clients on specific issues of immediate concern. It should not continue as a soapbox for attorneys to pursue their own interests in social causes.

I hope that the nominees today will restore the Legal Services Corporation to its original and much needed purpose of providing legal assistance to the poor.

[Questions for Legal Services Corporation nominees from Senator Hawkins follow:]

QUESTIONS FOR LEGAL SERVICES CORPORATION NOMINEES

In Florida, the Florida Bar Association has instituted an innovative method of financing legal assistance to the poor. Basing their program on British and Canadian programs, the Florida Bar petitioned the Internal Revenue Service for permission to use the interest income from small, short term escrow accounts to finance the legal aid and legal education scholarships administered by the Florida Bar Foundation. The I.R.S. approval of this program took several years and the program was only formally established on Sept. 1st of last year, but already 1,000 attorneys in Florida have signed on to participate in the program and several state bar associations have expressed interest in starting a similar program.

The Florida Bar Association estimates that they will raise about $1 million from the current participants in this program and that they could raise as much as $12-20 million if half of the 30,000 Florida Bar members participated.

What do you think of this proposal as an alternative for financing legal aid to the poor?

The Florida system is voluntary, but I understand that the California Bar is considering a mandatory plan. Do you feel that this system should be mandatory to assure stable funding?

During the 96th session of Congress, a restriction was placed on the appropriations bill that stated "none of the funds appropriated in this title may be used to carry out any activities for or on behalf of any individual who is know to be an alien in the United States in violation of the Immigration and Nationality Act or any other law, convention, or treaty of the U.S. relating to the immigraiton, exclusion, deportation, or expulsion of aliens."

I would think that this was a very straightforward prohibition against L.S.C. attorneys from representing illegal aliens. However, the General Counsel of the Legal Services Corporation has interpreted this restriction as applying only to aliens that have completed adjudication and whom a final order of deportation is outstanding which is not subject to further judicial review.

1 - Do you feel that this legal interpretation is circumventing Congressional intent?

As you know, there has been a great deal of Congressional activity to redefine this prohibition to make it more effective. The House amendment differs from the restriction the Senate placed on the vetoed Continuing Resolution in that the House version places an affirmative duty upon LSC attorneys to ascertain a clients eligibility before services are rendered.

2 - Do you feel that this additional duty is necessary to prevent L.S.C. attorneys from circumventing the intent of the law by intentionally not asking whether the client is legally in the U.S. ?

The **Chairman**. With that, we are happy to have your testimony here this morning.

STATEMENT OF JAMES B. WYNGAARDEN, M.D., NOMINEE AS THE DIRECTOR, NATIONAL INSTITUTES OF HEALTH

Dr. **Wyngaarden**. Thank you, Senator Hatch.

Mr. Chairman and members of the committee, I appreciate the opportunity to discuss with you today the background and views I bring to the directorship of the National Institutes of Health. I consider it a great honor to have been nominated by the President for this important position, and I want to assure you that I share with the members of this committee a high regard for the tradition of excellence in research and service to humanity exemplified by NIH. In assuming the post of NIH Director, my primary aim would be to nurture and enhance that position.

Having been personally and professionally associated with NIH in various connections for many years, I am no stranger to the institution. Nevertheless, I am quick to admit there is much to learn. I have, of course, developed a perspective toward NIH and its program during a career in medicine and biomedical science as researcher, teacher, and administrator. I am familiar with the headaches and heartaches, as well as the great satisfactions, that come with work in the health sciences.

In recent weeks I have been doing my homework on the programs, policies, and issues before NIH. In that crash course, I have been helped greatly by the officers and staff of NIH and of the Department of Health and Human Services. In that connection, I would like publicly to express my gratitude to Secretary Schweiker, who has been most helpful to me with his wise counsel based on long experience in government and health matters. I appreciate his support and encouragement. I am also grateful for the helpful advice received from Dr. Brandt and from Dr. Malone, Acting Director of NIH, and from Dr. Joseph Rall, the Acting Deputy Director for Science. And certainly, I want to thank the members of this committee for meeting with me and discussing NIH issues prior to today's hearing.

As mentioned earlier, I have had an association with NIH in various positions through the years. It could scarcely be otherwise, since NIH plays a unique and wide-ranging role in the field of biomedical research. Most recently, I have served as Hanes professor and chairman of the department of medicine at the Duke University School of Medicine. I have held that post for some 15 years, previously having served in various teaching, research, and administrative capacities at Duke and the University of Pennsylvania School of Medicine.

More specifically in relation to NIH, I have conducted research in its Heart Institute and in what was then called the National Institute of Arthritis and Metabolic Diseases. I have also served on the Board of Scientific Counselors to the latter Institute. In addition, I have served as a member of the NIH Cardiovascular and General Medicine Study Sections and as Chairman of the Medical Scientist Training Committee when the M.D./Ph.D. program was initiated. I also served as consultant to the White House Office of

Science and Technology Policy, as a member of the President's Science Advisory Committee and as Vice Chairman of the Committee on a Study of National Needs for Biomedical and Behavioral Research Personnel of the National Research Council, and as executive committee member of its Assembly of Life Sciences.

As you will gather from that brief account and a review of the curriculum vitae before you, my path has crossed that of NIH many times since graduation from the University of Michigan School of Medicine. During my professional life in basic and clinical research and in the training of future physicians and scientists, I have encountered the spectrum of problems and opportunities in biomedicine. I have enjoyed work in the health sciences during a period of explosive growth of knowledge.

In all candor, I must tell the committee that I did not actively seek the post of Director of NIH; I was personally and professionally content with my work at Duke. At the same time, however, I must emphasize the mixed sense of pride and awe I feel at being considered for the select company of distinguished scientists who have served as Director of NIH.

An underlying theme in my acceptance of that honor is a sense of obligation based on an awareness of the vital role of NIH in biomedical research, and its support of my work and the institutions with which I have been associated. Along with Duke University, I have personally benefited from the programs of NIH; I feel that service in this unique institution will constitute some measure of repayment. I welcome the opportunity to make a contribution to NIH and its mission.

I would now like to discuss some general views and basic principles concerning biomedical research and issues facing NIH.

I am well aware that this is a critical period for NIH and the field of biomedical research. The explosion of biomedical knowledge and improved technology in recent years offers greater opportunity for advances in medicine and health than ever before. At the same time, we must face the reality of economic constraints.

I am strongly committed to the pursuit of basic research as the foundation for the understanding, treatment, and prevention of disease and disability. Equally, I believe that investigator-initiated research holds the greatest promise for significant discoveries. History clearly shows that the great advances come through hard work by dedicated individuals and teams pursuing their own creative ideas.

In regard to basic research, I share the view of Dr. Lewis Thomas who wrote last year in the New England Journal of Medicine:

> We are beginning to draw from a bank of stored information in biomedical science, and I suspect that we are doing something like this in the physical sciences as well. There is some danger that the need to continue depositing new information in that bank will be overlooked in the pressure for quick applications. . . . If things go on in this way, the country's basic science effort will come to a standstill, and the bank will go empty.

One of my major goals as Director will be to preserve the traditional emphasis of NIH on basic research and training as the bedrocks upon which all of the rest of its program structure is built. The importance of basic research was underscored in a statement last December by the President's Science Adviser, Dr. George A. Keyworth, who said:

> Let me emphasize again that this administration views basic research as a vital investment with a good return and believes that, as a contribution to overall national security and economic strength, we must maintain health across the spectrum of science, striving for excellence in all these fields.

Dr. Keyworth was speaking of science in general, but his statement applies equally to the biomedical sciences. A commitment to Federal support of basic research is apparent in my discussions with Secretary Schweiker and others in this administration. As you know, the Secretary was an advocate for basic research when he was a member of this committee, and he continues this view in his present capacity. I am sure that view is shared by this committee, which has generously supported such work over the years. If you will permit, Mr. Chairman, I would also like to cite your remarks in introducing the Biomedical Research, Training and Medical Library Assistance Amendments of 1982. On that occasion you stated:

> Everyone, even critics of our national health policy, agrees that our Government's commitment to fund basic biomedical research has paid off handsomely. The results have been translated to improved health and medical care not only for our citizens, but also for people throughout the world.

As a corollary to emphasis on investigator-initiated research, I am also committed to support for research training, for both physician and Ph. D. research scientists. Clearly, if we are to have excellence and continuity in research, we must train scientists to carry on this work in the future.

I believe we must make every effort to maintain the momentum of scientific research and discovery achieved in recent decades, achievements based on many years of work in basic science. The intramural research program and the Clinical Center at NIH are key elements in the search for biomedical knowledge that extends across the Nation and throughout the world. Our recent advances in scientific understanding are being translated into medical practice and the result is improving health and well-being for all.

The kind of research necessary for such advances is highly complex, demanding well-trained investigators and sophisticated instruments. Not surprisingly, this work is expensive. And that fact, coupled with a need for budgetary restraint, places a high premium on sound decisions. Difficult choices are unavoidable and we must be prepared to make them. We must set priorities wisely, emphasizing our investigator-initiated research and relying on the system of study sections and advisory councils by which we weigh proposals and monitor progress in research. We must continue to manage our programs for maximum efficiency and effectiveness as we invest in areas of high promise in pursuit of the NIH mission to understand, treat, and prevent disease and disability.

In conclusion, Mr. Chairman, I want to restate my awareness of the unique role that NIH plays in the health of our people and assure you of my commitment to its continuing service. Words I wrote 2 years ago seem appropriate here:

> I have confidence that the issues confronting us can be met and the problems solved. The stakes are high. Basic scientific knowledge in biology and medicine continues to expand at an awesome rate. The stock of usable knowledge is at an all-time high, and the opportunities for successful application of that knowledge to un-

solved problems of health and disease have never been brighter. Great progress is being made, and the momentum must not be lost.

Mr. Chairman, I retain those views today and continue to believe, as I stated then, that "future medical historians will conclude that the Golden Age of medicine was not the two decades just passed, but the years that lie immediately ahead."

I thank you, Mr. Chairman and members of the committee, for the courtesies you have extended and for hearing me today. Frankly, I am eager to get on with the job and I look forward to working with you in the future.

I will be pleased to answer any questions you may have. Thank you.

[The biographical sketch of Dr. Wyngaarden follows:]

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: Wyngaarden (LAST) James (FIRST) Barnes (OTHER)

Position to which nominated: Director, National Institutes of Health **Date of nomination:** February 22, 1982

Date of birth: 19 October 1924 (DAY) (MONTH) (YEAR) **Place of birth:** East Grand Rapids, Michigan

Marital status: Divorced **Full name of spouse:**

Name and ages of children:

Patricia W. Fitzpatrick	34	Lisa Dean Wyngaarden	28
JoAnna W. Gandy	31	James B. Wyngaarden, Jr.	24
Martha W. Krauss	30		

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Calvin College, Grand Rapids, Michigan	9/42-6/43		
W. Michigan University Kalamazoo	7/43-6/44		
U. of Michigan	6/46-8/46		
U. of Michigan Medical School	9/44-5/48	M.D.	1948

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

University Scholar in Professional Schools (Medical), University of Michigan, 1946

Alpha Omega Alpha, University of Michigan, 1947

First Annual Borden Undergraduate Research Award in Medicine, University of Michigan, 1948

Dalton Scholar in Medicine, Massachusetts General Hospital, 1950

(continued on Attachment A)

Attachment A

James Barnes Wyngaarden, M.D.

Honors and Awards (continued)

Italian Society of Rheumatology (Honorary member, 1961)

Sesquicentenial Award, University of Michigan, 1967

Distinguished Alumni Award, Calvin College, 1970

Member, Institute of Medicine, National Academy of Sciences, 1973-1978 57

Modern Medicine Award for Distinguished Achievement, 1974

Member, National Academy of Sciences, April 23, 1974—

North Carolina Governor's Award for Science, October 23, 1974

Founder's Medal, Southern Society for Clinical Investigation, 1978

Doctor of Science degree (Honorary), University of Michigan,
Ann Arbor, May 3, 1980

The John Phillips Memorial Award, American College of Physicians, 1980

Sociedad Medica de Santiago de Chile, (Honorary Member), October 26, 1981

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
See Attachment B		

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

1946-48 Research Assistant in Pharmacology, U. of Michigan Medical School, Ann Arbor

1948-49 House Officer (Intern), Mass. General Hospital, Boston

1949-50 Assistant Resident in Medicine, Mass. General Hospital, Boston

1950-51 Asst. to Dr. Walter Bauer (Arthritis Practice), Massachusetts General Hospital, Boston

1951 Resident in Medicine, Massachusetts General Hospital, Boston

1952-53 Visiting Investigator, Public Health Research Inst. of the City of New York, Inc. (Under Dr. DeWitt Stetten, Jr.)

1953-54 Investigator, Lab. of Chem. Pharmacol., National Heart Institute, NIH, Bethesda, Maryland

(continued on Attachment C)

Attachment B

James Barnes Wyngaarden, M.D.

Memberships

Alpha Omega Alpha, University of Michigan, 1947-

American Rheumatism Association, 1954-

American Federation for Clinical Research, 1954-

American Board of Internal Medicine, Certified 1956

Southern Society for Clinical Investigation, 1956-; President, 1974

American Society for Clinical Investigation, 1957-

American Society of Biological Chemists, 1958-

Association of American Physicians, 1961-; Councillor, 1973-1978; President, 1977-1978

American College of Physicians, 1962-

American Clinical and Climatological Association, 1962-

Member, Advisory Board, Howard Hughes Medical Institute, 1969-

Member, Institute of Medicine, National Academy of Sciences, 1973-1983

Member, Executive Committee, Assembly of Life Sciences of the National Research Council, 1973-1976

Member, National Academy of Sciences, 1974-

Member, Committee for Study of National Needs for Biomedical and Behavioral Research Personnel, National Research Council, 1975-1982; Vice Chairman, 1977-1981

Fellow, American Academy of Arts and Sciences, 1976-

Member, Advisory Board, Science Year, 1977-1981

Member, American Association for the Advancement of Science,

Editorial Board, Proceedings of the National Academy of Sciences, 1979-1985

Attachment C

James Barnes Wyngaarden, M.D.

Employment Record (continued)

1954-56 Clinical Investigator, National Institute of Arthritis and Metabolic Diseases, National Institutes of Health, Bethesda, Maryland

1954-56 Clinical Instructor in Medicine, George Washington University, Washington, D.C.

1956-59 Assoc. Professor of Medicine, Duke University Medical Center, Durham, North Carolina

1959-61 Assoc. Professor of Medicine and Biochemistry, Duke University Medical Center, Durham, North Carolina

1961-65 Professor of Medicine and Associate Professor of Biochemistry, Duke University Medical Center, Durham, North Carolina

1956-65 and 1967-82 Consultant, Durham VA Hospital, Durham, North Carolina

1965-67 Frank Wistar Thomas Professor and Chairman, Department of Medicine, and Professor of Biochemistry, University of Pennsylvania School of Medicine, Philadelphia, Pennsylvania

1965-67 Consultant, Philadelphia VA Hospital, Philadelphia, Pennsylvania

1967-82 Frederic M. Hanes Professor and Chairman, Department of Medicine, Duke University Medical Center, Durham, North Carolina

Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

1. Consultant, Surgeon General, U.S. Public Health Service, Cardiovascular Study Section, 1958-1960
2. Consultant, Surgeon General, U.S. Public Health Service, General Medicine Study Section, 1960-1963
3. Consultant, Surgeon General, U.S. Public Health Service, Medical Scientist Training Committee, Chairman, 1967-1969 (continued on Attachment D)

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

See attached lists of publications - See Attachment E

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

Registered as Democrat in North Carolina. No political activities. Small contribution to Governor Hunt's Campaign in 1980, ($100), and to John Ingram's campaign in 1978 ($150).

Attachment D

James Barnes Wyngaarden, M.D.

Government Experience (continued)

4. Member, Advisory Committee on Biology and Medicine, U.S. Atomic Energy Commission, 1966-1968
5. Consultant, Office of Science and Technology, Executive Office of the President, 1966-1972
6. Member, National Institute of Arthritis and Metabolic Diseases, Board of Scientific Counselors, 1971-1974
7. President's Science Advisory Committee, Washington, D.C. 1972-1973
8. Consultant to the Food and Drug Administration, Department of Health, Education, and Welfare, 1972-1974
9. President's Committee for the National Medal of Science, 1977-1980

BOOKS

The Metabolic Basis of Inherited Disease, ed. by John B. Stanbury, James B. Wyngaarden, and Donald S. Fredrickson. New York: McGraw-Hill Book Co., 1960, 1477 pp.

Metabolopatias Hereditarias, ed. by John B. Stanbury, James B. Wyngaarden, and Donald S. FRedrickson. Salvat Editores, S.A., Barcelona, Spain, 1963, 1076 pp. (Spanish edition of above).

The Metabolic Basis of Inherited Disease, ed. by John B. Stanbury, James B. Wyngaarden, and Donald S. Fredrickson, Second Edition, New York: McGraw Hill Book Co., 1966, 1434 pp.

The Metabolic Basis of Inherited Disease, ed. by John B. Stanbury, James B. Wyngaarden, and Donald S. Fredrickson, Third Edition, New York: McGraw Hill Book Co., 1972, 1778 pp.

Purine Metabolism in Man: Enzymes and Metabolic Pathways, ed. by O. Sperling, A. De Vries, and J. B. Wyngaarden, Vol. 41A, New York: Plenum Press, 1974, 366 pp.

Purine Metabolism in Man: Biochemistry and Pharmacology of Uric Acid Metabolism, ed. by O. Sperling, A. De Vries, and J. B. Wyngaarden, Vol. 41B, New York: Plenum Press, 1974, 480 pp.

Gout and Hyperuricemia by James B. Wyngaarden and William N. Kelley. New York: Grune & Stratton, 1976, 512 pp.

The Metabolic Basis of Inherited Disease, ed. by John B. Stanbury, James B. Wyngaarden, and Donald S. Fredrickson, Fourth Edition, New York: McGraw-Hill Book Co., 1978, 1862 pp.

Textbook of Medicine, edited by Paul B. Beeson, Walsh McDermott, and James B. Wyngaarden, 15th Edition, Philadelphia: W. B. Saunders, 1979, 2357 pp.

Review of General Internal Medicine: A Self-Assessment Manual, edited by Lloyd H. Smith, Jr. and James B. Wyngaarden. Philadelphia: W. B. Saunders Book Company, 1980, 330 pp.

Textbook of Medicine, edited by James B. Wyngaarden and Lloyd H. Smith, Jr., 16th Edition, Philadelphia: W. B. Saunders, 1982, 2400 pp., In Press

The Metabolic Basis of Inherited Disease, ed. by John B. Stanbury, James B. Wyngaarden, Donald S. Fredrickson, Joseph L. Goldstein, and Michael S. Brown. 5th Edition, New York: McGraw-Hill Book Co., 1982, 1800 pp, In Press

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

No, I will be on leave-of-absence from Duke University.

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

Yes, possibly

3. Has a commitment been made to you for employment after you leave Federal service?

Yes

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None (Duke University has offered to continue to make contributions to my retirement fund during my leave-of-absence. These are the standard faculty benefits only)

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None. I will continue as a co-editor of 1) THE METABOLIC BASIS OF INHERITED DISEASE (with J.B. Stanbury & D.S. Fredrickson), McGraw-Hill Book Co., and 2) CECIL TEXTBOOK OF MEDICINE (with L.H. Smith), W.B. Saunders, and will receive honoraria for this work. The editorial work will be done outside of NIH working hours.

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None.

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

I have testified on several occasions before House or Senate committees on behalf of bills for Federal support of research training (National Research Service Awards).

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

The CHAIRMAN. Thank you, Dr. Wyngaarden. As we prepared for these hearings, a concern was frequently voiced from several groups that a career in biomedical research is becoming less attractive to young scientists because of relatively low pay and because of what is perceived to be fluctuating Federal support. These young scientists reportedly view a career in biomedical research as insecure. How do you propose that we create a sense of security and guarantee the best and the brightest of our young scientists will continue to devote their energies to basic research.

Dr. WYNGAARDEN. Senator, I think the statement is correct. I do feel, however, that the pendulum has begun to swing back. We are seeing somewhat greater interest in biomedical research on the part of young scientists, medical students, and medical fellows than was true 5, 6, or 7 years ago. I believe that there are several significant developments in the past few years that have contributed to that. One of these is the continued emphasis by congressional committees and by the NIH on training programs and the policy of stabilization, which has given substantial emphasis to the continued funding of direct research projects, especially investigator-initiated projects, and the record of the last several years which shows that young investigators are being supported. Roughly 12 percent of new awards each year are to first-time investigators. The commitment to stabilize the number and ratio of competing awards has been a solace to many young investigators who see that there is an opportunity for them at the end of training.

I believe that is beginning to have some effect. We see a slight increase in the number of physicians in biomedical training programs—about 3 percent over the last 2 years.

The CHAIRMAN. That is great. Research equipment is growing obsolete across the Nation. From what I have been able to see, the equipment shortfall has been estimated at $500 million. Recent reports warn us that the growing deficit in scientific information may jeopardize our ability to retain leadership in science and engineering and to solve the problems of industrial productivity, agriculture, health care, and national defense.

How do you deal with this problem? Is there any incentive, in the indirect cost category, for universities to invest in equipment?

Dr. WYNGAARDEN. The NIH has addressed this, of course, by continuing to define equipment as a part of the research grant. In addition, two Institutes have developed programs for funding larger pieces of equipment when they can be shared by two or more investigators with grants in two or more Institutes. The National Institute of General Medical Sciences has done that, and the Division of Research Resources has done that for expensive pieces of equipment.

That is helping to fill the void. But your statement is correct: There is a growing shortfall in biomedical research equipment, which has a relatively short half-life as new instruments and improved technologies are developed. They are expensive to install in research laboratories. It is not a fully solved problem, and we need to address that. There is some help, perhaps, in the recent tax law which gives tax credits to industry on the donation of equipment for educational purposes, but there remains a large gap.

The **Chairman**. Intramural research grew by $31.7 million in 1982. That was a 7-percent increase, to a total of $484.5 million in fiscal year 1983. This seems a disproportionate increase in funding for research done at the Bethesda campus. How do you explain this increase?

Dr. **Wyngaarden**. First of all, the intramural budget has grown slightly less than the extramural budget over 10 years. Last year was an exception to that, and that particular figure is largely explained by two rather special events. One was the obligatory pay increase, which cost about $20 million, and the other was the opening of the Ambulatory Care Research Facility, which has some expensive one-time-only feature to it. I do not believe that represents a policy decision to fund the intramural program preferentially.

The **Chairman**. The administration has made a concerted effort to highlight preventive medicine and health promotion. However, critics of its health policy are quick to point out that the focus of our greatest investment—that is the funding of biomedical research through NIH—has been almost entirely on treatment or cure of disease. What is being done to increase the research effort in preventive medicine?

Dr. **Wyngaarden**. Senator, I would not agree with the statement. I think the NIH has had a major emphasis on the prevention side of research from its inception. One of the greatest contributions that NIH can make is in the continued development of new knowledge which allows the preventive methods to take place. Certainly, the work on vaccines which has come out of the NIH over the years rests on solid basic science contributions over decades, and that continues to be an area of very high emphasis.

Some of the clinical trials that have been conducted also contribute to prevention—for example: the propanolol study, which has shown a decrease in the recurrence rate of myocardial infarction; and the hypertension control programs, which demonstrate that even mild hypertension can and should be treated because this reduces the likelihood of cardiovascular complications. I think the NIH has had a very strong emphasis on prevention and health promotion in this way, contributing to fundamental science and demonstration projects from the beginning, and that should be continued.

The **Chairman**. Evaluating the tremendous number of grant applications that NIH receives each year, I think, has to be an arduous task. While there appears to be a general consensus that the NIH peer review teams or system is the best method of appraisal, many have complained that the "good old boy" network prevents the system from working fairly. Could you briefly describe the selection, function, and workload of peer review groups; and then explain what steps, if any, have been taken to insure the objectivity and efficiency of these groups?

Dr. **Wyngaarden**. I have served on several such review groups. I have always been impressed with the extreme objectivity of the groups and the fact that applications are subjected to searching scrutiny in the fairest possible way. The work load has increased enormously in the last several years, and this continues to be a problem this year. The number of applications continues to be large. I think the "old boy network" criticism is really not founded in substance. About 80 percent of all members of review groups are first-time servers in that capacity. As a matter of fact, I have heard the other complaint voiced, that we do not have enough experienced hands in the review mechanism, because so much of the review is being done by people who have not had long experience at such review functions.

I think we need a balance of experienced people and new ideas in that mechanism. We are striving to continue to attain that.

The CHAIRMAN. What are your thoughts on the potential conflict between confidentiality—that is, the need to protect research of commercial value—and the need to communicate the results of experiments. Again, what do you see as the Government's role in that particular issue?

Dr. WYNGAARDEN. My personal viewpoint is that scientific exchange of information should be open and free and that infringement of that should be only for very specific and selective reasons. I think that the rapid transfer of research results into improved care, or technology transfer, is in the interest of science, it is in the interest of the country, and it is in the interest of the most economic development of new ideas. I personally would not favor any restrictions on that type of flow of information.

The CHAIRMAN. There are significant differences of opinion among institutions and research scientists regarding just how much of our NIH budget should be spent to indirectly support our universities. What is being done to address these concerns?

Dr. WYNGAARDEN. Senator, the indirect costs of conducting research have grown rather steadily over the last 10 or 15 years. Originally, the indirect cost rate was about 15 percent of the total grant dollars. Now it is 29½ percent. These increases are true costs of research. They reflect the rising cost of utilities and other services at the universities, as elsewhere. This problem is one that clearly restricts the flow of dollars into research itself. Although they are true costs of research, they are indirect costs of such activities. This year, because of constrained budgets, the NIH has proposed reducing the payment of indirect costs by 10 percent across the board. This has, of course, occasioned a very substantial reaction from universities which find that these funds are necessary to continue to fund the research from the standpoint of university services.

It is an area that is under active study, and its solution will require a dialog between Government and universities, and within universities, between administrations and investigators.

The CHAIRMAN. As an elected representative of our country, I am concerned about the great sums of money authorized for biomedical research and that these funds be used as efficiently and as effectively as possible. In the oversight hearings held last year on the National Cancer Institute evidence presented brought to light that certain funds had been mismanaged, and I am certain that to some extent similar problems have probably occurred in all of the institutes. What steps have been taken or might be taken to prevent the waste of taxpayers' dollars by funding questionable projects?

Dr. WYNGAARDEN. The intent of the review mechanism is, of course, to subject each grant and contract to a very intense scrutiny for scientific merit and technical feasibility and then, at the second level, to insure that the programs fit the policies of the NIH and the country. Although I think the peer review system has worked very well, it is always true that every system can be made to work better. I think the oversight hearing substantially improved management within the Cancer Institute. Some of the lessons learned from that are being applied more generally within NIH, and I think this needs to be an area of continued surveillance and review to make sure that the programs are managed as efficiently and as thoroughly as possible.

The **CHAIRMAN**. I have a number of questions that I will submit in writing, but let me just ask one other of you. There has been a lot of press over the past year about "bad research" or "dishonest scientists" or "downright fraud" on some research projects. Do you think these are major problems and, if so, what have you done about it, what is being done about it, or what will you do about it?

Dr. **WYNGAARDEN**. There is a perception of an epidemic of dishonesty in science, and I think that there may be more under the pressures of competition today than perhaps was true in the past. On the other hand, the number of such events is still relatively small, although they are dramatic and reprehensible when they do occur. We have had some 19 cases, I believe, under investigation over the past few years. Most of these have been concluded within a few months. A few of them are continuing to receive attention. That is among some 15,000 or 20,000 annual grantees. So the percentage is not large—at least the percentage that has come to light.

They clearly are not to be condoned. The role of the NIH in dealing with such misconduct in science has been appreciably sharpened in the past couple of months, and we are continuing to develop tighter policies for dealing with that. There is now an institute-wide committee which alerts other institutes whenever a case of fraud or alleged misconduct has been called to our attention, so that other institutes are aware of that, and so that appropriate restrictions or sanctions can be put into play, if necessary; and, of course, at the end of the line, for the most serious of such infractions, there is the debarment procedure which was enacted a few years ago.

The **CHAIRMAN**. Thank you.

Senator Metzenbaum, let us turn to you.

Senator **METZENBAUM**. Dr. Wyngaarden, I enjoyed speaking with you the other day, and I felt that our exchange was helpful for me. I hope it was for you.

I wanted to ask you about a subject that I did not discuss with you. Would you tell me the status today of computerized programs to make available to general practitioners information which has been developed at research centers concerning the most advanced type of medical treatment? I had an interest in this subject some years ago, and I have not really been brought up to date on it. Would you tell me where we are with it and what plans, if any, you have for further implementation?

Dr. **WYNGAARDEN**. Yes. A major facility and component of the NIH in technology transfer and information transfer is, of course, the National Library of Medicine. The Library of Medicine abstracts a very large number of medical journals each month and makes that information available to medical centers, universities, and other consumers through a computerized data bank of medical information.

In addition, several of the Institutes do that in a treatment and practice sense, such as the National Cancer Institute. This is an area which receives very vigorous attention, and we will continue to promote that.

Senator METZENBAUM. If there is a general practitioner in Ottumwa, Ohio, and he finds a medical problem with which he is not familiar, and he wants to get filled in more—he is very busy; he does not have the time to read all the medical journals—what resource is now available to him?

Dr. WYNGAARDEN. Probably the simplest manner for him to proceed is to contact the medical librarian in the local hospital. Most of these local hospitals are now equipped to tap into the MEDLINE service provided by the Library of Medicine, so they can search for information on the topic that the practitioner is inquiring about; from the printout of the relevant articles, they can select from finer and finer parameters those that are most pertinent to the question being raised. The medical librarian can then secure those journals from a local library, or by a loan system from the National Library of Medicine.

Senator METZENBAUM. You and I talked the other day about a subject that has concerned me—the fact that more and more funding for medical research is being used not for direct medical research but indirectly for medical college use. I believe you told me that the administrative overhead now is running about 29 percent of the total research dollar. This really means that if there were a billion dollars, in rough figures, being used for medical research, $290 million of that would be used for many matters that all of us would agree are not direct medical research, such as funding the library, funding the parking lot, funding the overhead of the administrative offices.

You also indicated that there is either pending or now operable a requirement that this be cut down to 90 percent, but I am not sure what 100 percent represents. I wonder if you would address yourself to this subject.

Dr. WYNGAARDEN. Yes. The Public Health Service funds research projects and then pays the full costs of research. The costs fall into two categories: direct and indirect. The direct are those concerned with supplies and equipment and the laboratory itself, the salaries of the technicians, and the pro rata salary of investigators working on research projects. The indirect costs are a series of categories, but they are also true costs of research. They include such things as utilities to heat the laboratories. They include some share of the cost of the purchasing office, some share of the library, some share of the administrative costs of the universities. Those are actually set by the Department; negotiated by the Department with the individual award institution. It is that category of expense connected with research that has become the fastest-growing component in recent years and has reached a level, as you indicated, of 29 or 29-1/2 percent of the total. This past year the sum for that purpose was $665 million.

From the standpoint of the university, that is necessary money. They feel they are doing the NIH's research, research for the Government, and that they are entitled to full reimbursement for that. It has become such a large fraction that this year, when it became necessary to cut back on the budget, rather than sacrificing research grants totally or training totally, a decision was reached at the NIH and in the Secretary's office to apportion these cutbacks in several categories. Research grants were cut back, training slots were cut back, the amount available for noncompeting renewals was cut back 3 or 4 percent; and the indirect cost rate was set at 90 percent of the previous level rather than 100.

That is clearly not viewed as a long-term solution. It draws particular attention, however, to a major problem which needs to be addressed collegially by the Department and the universities.

The rates vary widely from one university to another. Part of that may reflect the differences in fuel costs in one part of the country or another and other services. But there will be an intensive study of this in the very near future, to see whether there is any way of controlling those costs or perhaps of excluding from eligibility some which are now allowed.

Senator **METZENBAUM**. Am I not correct in my thinking that a very substantial portion of the administrative overhead really is not directly or maybe even indirectly related to research—for example, overhead might include all the costs of the purchasing office or the executive offices of the university—and that this figure was considerably lower in past years? Is that not a fact?

Dr. **WYNGAARDEN**. That is true.

Senator **METZENBAUM**. Would you furnish the committee with: One, a schedule indicating what these percentages were, what they are now, and how they have grown, and the dollar amounts involved; and two, would you also furnish the committee, within a period of 90 days, with your recommendations or some indication as to what will be done in order that we who are strongly supportive of research will not feel that we are cutting back on research, but rather that we are having more dollars going into the research factor and less of them going into paying the costs of the medical schools overhead, notwithstanding the fact that I, for one, would be willing to consider subventing the medical school. I have no objection to doing it, but I think that we ought to know what we are doing; we ought not think we are spending $500 million for cancer research or $1 billion and find that we only have $710 million out of that $1 billion available for research, with the other 29 percent going for not even indirect costs of research but for unrelated costs of the university. The indirect costs, such as heating and the rooms where the research is being done, is that already considered part of the 71 percent?

Dr. **WYNGAARDEN**. No, sir. That is in the other category. That is indirect.

Senator **METZENBAUM**. Would you be in a position to do that within 90 days?

Dr. **WYNGAARDEN**. Yes, we will be glad to do that.

Senator **METZENBAUM**. I would appreciate that.

I have no further questions.

Dr. **WYNGAARDEN**. Thank you, Senator Metzenbaum.

Senator KENNEDY. Dr. Wyngaarden, I want to welcome you here before the committee, and I congratulate you on your nomination.

Dr. WYNGAARDEN. Thank you.

Senator KENNEDY. I would like to make a brief comment and then I have a few questions. I will not delay you long, but I think this is an important hearing. As one who has followed the research programs of this country over some period of time, I am interested in your views.

This Nation's biomedical research program has been preeminent in the world. The American people expect a great deal from their investment in the National Institutes of Health and have demonstrated their willingness to maintain the excellence of our biomedical research program. A recent poll by the University of Chicago found that more Americans want to see their tax dollars spent on health-related research than on any other area of research and development. Yet funding for the NIH is declining in constant dollar terms after more than three decades of steady growth. NIH experienced a 15-percent decline in real dollar terms since 1979. The President's request for fiscal 1983 represents an additional 3-percent cut. The touted $108 million increase is, in reality, a mirage.

This decline in support jeopardizes the continued success of our biomedical research effort. The National Academy of Sciences has consistently recommended that at least 10,900 young scientists be trained each year under the National Research Service awards. The President's fiscal 1983 budget would support only 8,900 trainees.

There is widespread agreement that the NIH should award at least 5,000 new and competing investigator-initiated research projects each year. This is the minimum investment needed to assure the stability of the biomedical research enterprise and to assure a continuing infusion of innovative research concepts and promising young researchers. The Reagan budget would fund only 4,000 new and competing projects.

The director of the National Institutes of Health plays a critical role in the success of our biomedical research programs. He must wear many hats in the course of carrying out his responsibilities. He must be an administrator. As the head of NIH, he is ultimately responsible for the management of 11 separate institutes, the Clinical Center, and the central support staff. He must be a communicator, able to translate the technical aspects of science in a language understandable by both the Congress and the American people. Conversely, he must be able to advise the scientific community of the concerns of the administration, of the Congress, and of the American people. He must be a strong advocate of biomedical research and the NIH. In eternal wrangling with the Department of Health and Human Services and OMB over funding levels, the director of the NIH must make a persuasive and convincing case for an adequate budget for biomedical research, a budget that provides stability and permits growth.

We are here today to explore your qualifications, Doctor, to be director of the National Institutes of Health. Yours is a new face to us, and we look forward to hearing your views on some of these important matters.

I would just add, Doctor, that as one who has followed the research efforts out at the NIH, I do think we are at the point of some extraordinarily significant and important breakthroughs in a variety of different areas. The concern that I have and I think many Members of Congress have is that the very real possibilities for those breakthroughs now on the horizon will be delayed by the failure to provide adequate resources to the NIH.

I would be interested in your view as a clinical investigator and teacher as to what is your own sense of the impact of the reduction in support on career choices of medical students, on training institutions and on the long-term direction of our biomedical research enterprise. I do not want to make your job more difficult, but I think it is extremely important that we lay out at this hearing what your sense is, as someone who is going to have a major responsibility, and as someone with a very well-deserved reputation as outstanding investigator, researcher, teacher, and administrator. What is your sense about the impact of reductions in the areas of research training careers for medical students and training institutions?

Dr. **Wyngaarden.** I share completely, Senator, your point of view that we are on the threshold of very significant further discoveries and applications in the health sciences, based on research currently going on and that done 10 and 20 years ago that has now reached a stage where such application is possible. In order to continue this kind of progress in the future, we need not only to fund research adequately but to continue to train young investigators who will participate in this program over the decades ahead.

I was a member of the Academy committee—and have been since 1974—that has advised the NIH on the levels of numbers of trainees that, in our judgment, would be necessary to continue this progress in an optimum manner. It is true that the committee has recommended levels such as you have indicated, and I believe these are still valid targets. I think the system can be trimmed back temporarily, in view of the fiscal constraints that the Nation faces, but I would hope that as economic recovery occurs we could get back to those levels just as soon as possible.

Senator **Kennedy.** Maybe you could just describe to the committee what happens when you interrupt research teams. The difficulty is quite unlike an assembly plant producing automobiles. One day you click it off; you click it back on, and it produces again the next day. I think we ought to get some sense of what happens when we interrupt the research flow line.

Dr. **Wyngaarden.** You are quite correct in that. It is a difficult and a slow process to put together an effective research team. Once such a team has been put together, the conduct of its research and its training missions are very precious. Interruptions can very quickly cause such a team to dissipate and its members to go elsewhere, where support may be more stable. We need to prevent that kind of disruption in every possible way.

I do think that the stabilization policies that achieved the support of the Congress and the administrations over the last several years have addressed that question. We would like to do whatever is possible, within the constraints of the budget, to maintain that policy of a broad, balanced program that gives equal emphasis to research and to training.

Senator **Kennedy**. With the reductions in scholarship help and assistance, and the need for medical students to borrow more to continue their medical education, are we providing an incentive to go into research or a disincentive to go into research? Do you find from your own experience that these individuals will go into certain specialties in order to gain the kind of resources necessary to pay back their loan, or do they go further and further in debt?

Dr. **Wyngaarden**. I have written on that subject. I believe that is one of a number of factors. Certainly the debt loads incurred by medical students, which are now $20,000 or $30,000 in some instances, constitute a disincentive to remain in an area of biomedical science—research—that is not as remunerative as its practice might be. On the other hand, there are many dedicated individuals who will still do so, and we need to capitalize on that kind of dedication.

Senator **Kennedy**. What would you do, as the administrator of NIH, to try and bring young researchers and young doctors into the research area? What ideas do you have?

Dr. **Wyngaarden**. The NIH has already attempted to be responsive to the language of the previous Congress, paying special attention to the need for physician investigators. It continues to give high priority to the M.D./Ph. D. training program. There are approximately 1,000 students being funded for summer quarters or other elective quarters during any 1 year. The training grant administrators in the various institutions have been advised that Congress has placed a special emphasis on the training of physician investigators, and that in the clinical training programs they are to be given preference. Such instructions have also been given to the merit reviewers who are looking at individual fellowship applications to make sure that worthy physician-investigators are appropriately considered.

National Health Service Corps graduates can now repay their service obligations through a National Research Service award at universities; and the NIH is considering establishing such a program so that eligible candidates may also be able to repay these obligations at the NIH. It is a broad-gaged program designed to address this problem.

Senator **Kennedy**. I hope you keep us abreast of how that is working, because I think it is exceedingly important.

On the issue of the exchange of research information with other countries, there have been restrictions proposed on that type of exchange of information. Do you have any reaction to that?

Dr. **Wyngaarden**. My personal reaction, at least as to the biomedical sciences, is that it would be ill advised. I am very strongly on the side of open and free communication and to the dissemination of useful knowledge that will affect health throughout the world, and not in restricting the flow of such information.

Senator **Kennedy**. I think it is one of the things which we can do to assist countries around the world. There is a good deal that we can gain, in terms of information exchange.

Dr. **Wyngaarden**. Yes, I agree with that.

Senator **Kennedy**. One of the other areas I am interested in is how we assure that the benefits of research attained at NIH actually get to the bedside. Can you give us your views about this and tell us how you rate that, in terms of importance, and what ideas you have about it?

Dr. **Wyngaarden**. I think it is very important, Senator. There are a number of things in place now that need to be continued. Certainly the clinical trials mechanism is one: when an idea is ready for testing and application in disease States, well-controlled trials are conducted to demonstrate the feasibility, efficacy, and safety of such innovations, both in terms of treatment advances and in terms of technical transfer. Demonstration projects which will bring the NIH into the area of the feasible demonstration of treatment modalities at a community level are very important, stopping short of assuming responsibility for the delivery system but, nevertheless, interacting with it to introduce such measures that are ready for such application.

Of course, a very large area is the Library of Medicine, which provides information transfer from computerized literature systems to users throughout the country and throughout the world.

Senator **Kennedy**. What are the budget figures on that? Is that being cut back at all, the Library of Medicine?

Dr. **Wyngaarden**. They show a very small increase.

Senator **Kennedy**. Over the period of the past years, we have sought to stabilize support for competing research projects at about 5,000 per year. This year, as I understand, we go down to 4,100. What is the impact of such a reduction in terms of research awards for young researchers and in terms of innovative research concepts?

Dr. **Wyngaarden**. The system will be more constrained. The number of new starts and competitive renewals has fluctuated over the past decade from something in the 3,000 range to the high 5,000's—5,900, I believe. So that 5,000 represents a good average figure for most years. This year the budget will permit 4,100, and, to achieve that, some other modifications of the total budget were also necessary. That is somewhat more constrained than it has been, and I would hope that as the economy recovers, that figure could be raised. It is, nevertheless, a substantial number. A great deal of high-quality research can be done. It will be more competitive to achieve grant support this year than in other years, so that only projects of the very highest priority will be funded under this budget. It is a substantial budget, and a great deal of good research undoubtedly will be done.

Senator **Kennedy**. I suppose the real restraint comes upon the newer research and the younger researchers. I suppose that when you have belt-tightening, you have awards going to the more established research programs?

Dr. **Wyngaarden**. This is possible, but last year 12 percent of the new awards made were to first-time investigators. That is not a bad ratio.

Senator **Kennedy**. How does that vary? Is 12 percent about what you would expect? Is that normal, high, or low?

Dr. **Wyngaarden**. I think that is a good steady figure. It has been roughly that, so it has not suffered appreciably.

Senator **Kennedy**. Do you expect that with the newer figures they would remain about that same percentage?

Dr. **Wyngaarden**. I would hope so. One of the points that I personally found of interest—looking back over the experience of the NIH over the last 7 or 8 years, when I did this for another purpose 2 years ago—was the finding that the success rate of first-time applicants was quite high, and it was useful to be able to publish those figures. They were reassuring to the young scientists coming into the system, who somehow feared, as your question implies, that they might be the ones to lose out. It turned out that the first-time investigator was competing quite successfully, even in rather stringent years. That was, I think, a stabilizing factor in the minds of many people who were nervous about the risks.

Senator **Kennedy**. We have recently passed the Small Business Improvement Act; I do not know whether you are familiar with it. It was really based upon an expansion of the concept that Senator Hatch and I had introduced in 1976 on the National Science Foundation. There is a good deal of concern within the research community about set-asides in the research area.

Actually the amount of all Federal programs that would be set aside is smaller. It goes up to 1 percent in the Senate bill and 3 percent in the House bill. It is being considered now in the House of Representatives. It would apply to the NIH. We have heard it from a number of distinguished academicians and individuals who have expressed views—good friends of mine and good friends of yours and people of great distinction, who have been concerned about the whole research capability in biomedical research. Should we exempt the NIH from those set-asides?

Dr. **Wyngaarden**. The small business community has access now to the grant/contract mechanism. As you know, since January of this year, all restrictions on grants to for-profit companies have been removed. So the mechanism exists for them to come in through the usual peer review system to apply for grants and contracts. Of course, the for-profit sector has participated in the contract mechanism for a long time, and some 88 small business contracts were in force last year. Other contractors have been in the system in the past and have completed their work and are not now in it.

I think the general view has been that the companies are best equipped to participate in the kind of basic biomedical research funded by the NIH tend to be larger companies—not very many small businesses have been able to make the multimillion-dollar investment that such commercial research requires—and that it would be better to see how the present system works for awhile before setting mandatory limits. Nevertheless, if that bill is passed, we will do our best to comply with it.

Senator **Kennedy**. Very frankly, I am very much influenced by your own view of whether we exclude the NIH from it. I think there are some very important considerations. You may want to give some thought to that and respond to the committee about the best way we ought to proceed. I think the members of this committee who follow the peer review system are all aware of the difficulties with it. But nonetheless, I think most of us have been strong supporters of it. I have been and will continue to be. I would be interested in how we ought to best deal with that so that we do not affect the NIH adversely and the basic research areas adversely or interfere with the peer review system.

We have seen in the demographic shift in our schools and colleges smaller numbers that are going to the universities and colleges. With the tenure system, there are fewer opportunities for some of the younger researchers to be able to gain professorships and move on through the academic centers. Many of those have gone into the private sector. There is an enormous resource there, and the question is, How do we in an appropriate way insure that the Nation is going to benefit from that kind of talent and yet, from the public's point of view, be sure that we are going to get the value of the investment and protect the public interest but also see what can be done in the research area.

I want to thank you very much, Doctor, for your responses. I think we are very fortunate to have you nominated for this position, and I welcome the opportunity of supporting your nomination. I look forward to working closely with you and I hope we can be of whatever assistance we can.

Dr. WYNGAARDEN. Thank you, Senator.

The CHAIRMAN. Senator Pell, do you have any questions or comments?

Senator PELL. None, except to welcome Dr. Wyngaarden.

I am quite sure you will do an excellent job. I am particularly interested in the International Cancer Research Data Bank about which we have spoken. I hope that you will sensitize yourself to its problems and the work that it can do in bringing more and better treatment to cancer, not only in our own country but across the world.

Dr. WYNGAARDEN. Yes, sir.

The CHAIRMAN. Thank you, Senator Pell.

Thank you, my fellow colleagues. I obviously agree that you have excellent qualifications and are highly qualified. I would recommend, if there is no objection, Senator Kennedy, that we pull out Dr. Wyngaarden today as quickly as we can. Is that all right with you?

Senator KENNEDY. Yes.

The CHAIRMAN. Without objection, we will try to pull you out today and see if we can move your nomination ahead as quickly as possible. Thank you so much, sir, for appearing. We appreciate having you with us.

Dr. WYNGAARDEN. Thank you, Senator Hatch, and members of the committee.

The CHAIRMAN. We will now move on to the next group of nominations.

Institutions need constant attention if they are to remain productive. That is a lesson I have quickly learned as a Senator by sitting in hearings which oversee programs such as the Legal Services Corporation. I say they need attention because our public institutions quickly lose sight of the problem they were created to solve and take on a life and character of their own choosing.

The Legal Services Corporation is an agency which has been the focus of much criticism for losing sight of its purpose. The program was first started over 17 years ago, because this country became aware of the need to be assured that no person would be denied access to our justice system because of his or her lack of financial resources. The Legal Services Corporation is an example of a good, though not unique, agency which will need to be guided back to its initial mandate.

I strongly believe in the initial intent of the program, as does our President. Those of you who have been nominated have been nominated to be stewards of this program, which will need strong and vigorous leadership to help the program fulfill its original mandate. Your leadership and dedication to the basic principles of justice are most welcome.

At this point we will enter into the record a statement presented by Senator Warner at the onset of a hearing held on March 29 to consider the Legal Services nominees but which, however, was consequently suspended until today.

[The statement as presented by Senator Warner on March 29, follow:]

STATEMENT OF HON. JOHN WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. I thank you, Mr. Chairman. I do appreciate the delays that all of us are confronted with from time to time.

Mr. Chairman, I appear this morning on behalf of Bill Olson, a Virginian who has been honored by the President as a nominee for membership on the Board of Directors of the Legal Services Corporation.

Mr. Chairman, that Corporation is of great interest to me. Just as a personal note, I served as an assistant U.S. attorney for 5 years in the late 1950's and witnessed enormous abuses of individuals brought before the bar. After leaving the office, I started here in the Nation's Capital with some others the Prettman fellowship program, which was the forerunner of much of the work done in legal services today.

Therefore, this is an area in which I have been involved a good deal of my professional life and I am very supportive of the objectives of the Corporation. It is imperative that we give special scrutiny to the character and qualifications of those singled out for the positions of this important public trust. I am confident that the committee's evaluation and action regarding Mr. Olson will reflect this commitment to excellence and afford the nominee an opportunity to express his concerns as well.

Mr. Olson was educated at Brown University, receiving a bachelor of arts degree in political science and economics. In addition, Mr. Olson received instruction at the Institute of Comparative Political and Economic Systems at Georgetown University. He then went on to receive his juris doctor degree from T. C. Williams School of Law at the University of Richmond in 1976.

Since that time, his experience has spanned private enterprise as well as dedicated public service to our Nation. Through Mr. Olson's legal career, he has concentrated on a broad range of issues, including litigation, commercial matters, defense of medical malpractice cases, and public and private sector labor law.

As you may know, Mr. Chairman, during the last 4 months Mr. Olson has served as a member of the Board of Directors of the Corporation, and in December of last year President Reagan appointed him as Acting Chairman, a position that he held until recently.

Prior to this position, Mr. Olson has been a member of three prominent law firms in the Washington area. He has also been admitted to the Supreme Court of the United States, as well as a number of lower courts. His professional associations include the Virginia State Bar, the Virginia Bar Association, the American Bar Association, and the District of Columbia Bar Association.

I have known Mr. Olson for a number of years. He is a skilled attorney and I have the highest opinion of his professional capabilities. I recommend him to this committee for confirmation.

Thank you, Mr. Chairman.

The CHAIRMAN. We are now pleased to introduce the remarks of Senator Tower into the record at this point.

[The prepared statement of Senator Tower follow:]

STATEMENT OF INTRODUCTION BY SENATOR JOHN TOWER
For Harold R. DeMoss, Jr.
Nominee for Member, Board of Directors Legal Services Corporation
April 21, 1982

Mr. Chairman. It is both a great pleasure and a distinct honor to introduce my good friend, Mr. Harold R. DeMoss, Jr. of Houston.

Hal has had a long and distinguished career, being active in both the legal profession and in numerous civic endeavors. A graduate of Rice University and the University of Texas School of Law, Hal is a member of the Houston Bar Association. Hal served as a Director of the Houston Bar Association from 1969 to 1971 and was the First Vice-President of that association from 1972 to 1973. In addition, he is a Life's fellow of the State Bar of Texas.

Hal DeMoss is also a member of the Maritime Law Association of the United States, the American Judicature Society, the International Bar Association, and is a member and has served as a Director of the Texas Association of Defense Counsels. He is a member of the Houston firm of Bracewell and Patterson, having been elected a partner in 1961.

Hal has not, however, confined himself to achievements in the legal field. He has served as a member of the Board of Directors of the Panama Canal Company under President Nixon. Hal was the Chairman of the Texas Bill of Rights Foundation from 1969 to 1970. He has also sat on the Board of Directors of Amigos de las Americas, a volunteer organization which promotes international fellowship through student exchange, and he is currently on the Board of Directors of the Retina Research Foundation.

Although Hal DeMoss has an impeccable professional reputation and has been an active community volunteer, those are not his primary qualifications to serve as a member of the Legal Services Corporation Board of Directors. I have supported Hal's nomination to this board because I know that he is dedicated to the enhancement of both the professionalism and the reputation of the bar. During this difficult time in the history of the Legal Services Corporation, when it is under attack both in and out of Congress by those who contend that it does not fulfill either its statutory mandate or its general obligation to represent those who would not otherwise receive legal counsel, I must heartily recommend Hal DeMoss. Hal recognizes the poignant need of those who cannot afford legal counsel and is committed to ensuring that the profession, and the government, keep their promises to provide urgently needed individual legal assistance. His nomination, and confirmation, to the Board of the Corporation will represent a significant step toward keeping that most important promise.

The **CHAIRMAN**. We are very pleased to have Senator Cohen with us today, and we will begin with Senator Cohen who will speak for Mr. Dana.

Senator Cohen, we are very happy to have you here.

As I understand it, none of the Legal Services nominees are going to give statements this morning, so we are going to have a 10-minute rule on questions for the actual nominees, and then when we get to witnesses we will reduce that to 5 minutes. We hope the witnesses will keep their statements to about 3 minutes.

Senator **METZENBAUM**. Will the chairman give an opportunity for opening statements?

The **CHAIRMAN**. Sure. Senator Kennedy?

Senator **KENNEDY**. I think we can hold.

The **CHAIRMAN**. I wonder if we could please hold. Senator Cohen has been here a long time.

STATEMENT OF HON. WILLIAM S. COHEN, A U.S. SENATOR FROM THE STATE OF MAINE

Senator **COHEN**. Thank you, Mr. Chairman. I have a few brief remarks.

I am delighted to have the opportunity to present to you a good friend of mine, Howard Dana, Jr., who has been nominated by the President to serve on the Board of Directors of the Legal Services Corporation.

Mr. Dana is an alumnus of Bowdoin College. In fact, we were classmates and have a 20th reunion coming up this year. He went on following Bowdoin College to receive a Masters in Public Administration and a law degree from Cornell University, where he was also an editor of the Cornell Law Quarterly. After receiving his legal training, he returned to Maine and then served an internship as a law clerk to one of the most distinguished jurists, I believe, in the United States of America, Judge Edward T. Gignoux. Following that service as law clerk, he entered private practice in 1967, and today he is a partner in one of the most prestigous firms in the entire State of Maine.

He has served his community and the State with a rather active involvement in a wide variety of civic affairs. I know he is held in the highest regard by the legal community, as well as his own home town officials and supporters. He has been a chairman of the school board, a trustee of Westbrook College for 10 years, a vice chairman of the board of trustees of the Portland School of Art. I know that his firm has devoted many hours and quite a bit of legal talent to work with the Pinetree Legal Services in the State of Maine. He has also served as treasurer of the OEO in Portland.

I am confident that Howard will serve with distinction and that his appointment will be a great asset to the board. I appreciate the opportunity to appear before you, and I hope that his nomination will receive speedy confirmation. Thank you, Mr. Chairman.

The **CHAIRMAN**. Thank you so much, Senator Cohen. We are happy to have you here, and I think it is a tribute to you, Mr. Dana, to have him supporting you.

Senator Hawkins has a statement with regard to Mr. William Earl of Miami, Fla. So we will place that in the record at an appropriate place, without objection.

Do any of the nominees for the Legal Services Corporation have any statements to be made? Why not have as many as we can seat there in the seven chairs. We will have the first seven come up, and then we will have the remainder.

Senator Kennedy, do you have any remarks?

Senator KENNEDY. Yes. I would ask that my full statement be placed in the record at an appropriate place, Mr. Chairman.

The CHAIRMAN. Without objection, so ordered.

Senator KENNEDY. First of all, I want to apologize for any inconveniences which we, the members of the committee, have put these nominees through. I want the record to reflect and the Chair to understand, that these inconveniences resulted from various misunderstandings. There was, of course, inconvenience to the members as well as the nominees.

I want at the outset to indicate that there is strong interest in the Senate on the whole issue of the Legal Services Corporation. I have followed this issue very closely over a number of years. I was very much involved in the 1974 legislation which established the Legal Services Corporation and also with the establishment of the criteria for the Board of Directors.

These criteria were outlined in the legislation. They were given very considerable consideration during our hearings, during the development of the legislation, and during the conference with the House of Representatives. The report outlines three primary criteria: (1) The board should adequately represent the organized bar, the legal services attorneys, the general public, and eligible clients; (2) the Board members should be committed to the Corporation's political independence; and (3) the Board members support the underlying principle of the legislation that the poor should have full access under law to comprehensive and effective legal services.

As a former chairman of the Judiciary Committee, as well as a member of this committee, and as someone who has followed this legislation and has been involved in the debates, the one thing that I am very convinced of is that the wealthiest corporations and the most powerful individuals are well represented here and in the courts. They are well represented before this committee, well represented before the Judiciary Committee, and particularly well represented before the Finance Committee and the Ways and Means Committee.

Our society has recognized that the needy people of our society ought to be guaranteed these same opportunities to participate in our legal system. The legal services program was established, as you well know, as part of the war on poverty a number of years ago. Because of its enormous contributions, it was continued as an independent entity.

I think there is obviously some concern, which has nothing really to do with the individuals, about the way the appointments were made. The appointments were made after a considerable period of time had elapsed and this obviously raises some questions about the administration's attitude toward the Legal Services Corporation. I am hopeful that as individuals you are able to give us some feel for your own view—for your commitment to this concept and to the independence of this organization.

I would like to know, Mr. Chairman, about the request a number of Senators submitted to Mr. Olson. We requested the report provided by the transition team to the White House on the Legal Services Corporation. I was wondering if that information would be made available to the members of this committee who are going to be considering these nominations. This letter was sent on April 14 by a number of members of this committee. I am just interested. I will make this letter to Mr. Olson a part of the record at an appropriate place, but I would be interested in what information you have been able to gain, if any, in response to our letter.

The **Chairman**. Why not let the others make their statements and then we will go on to that.

Senator Pell?

Senator **Pell**. I have no opening statement.

The **Chairman**. Senator Metzenbaum?

Senator **Metzenbaum**. Mr. Chairman, I think this hearing is very important. I think the entire subject of the Legal Services Corporation is very much on the minds of many people in this country, particularly the poor, who are concerned about whether they will or will not have legal services available to them.

It is an accepted fact that the President has recommended the elimination of the Legal Services Corporation in fiscal year 1983. In 1982, the President recommended eliminating the Legal Services Corporation. It is also a fact that the authorization has passed the House, in spite of that position of the Administration. It was reported out by this committee but has not been brought forward for action on the Floor of the Senate.

It is important that as we take up these nominees we give consideration to what we really are talking about. The Legal Services Corporation in reality is a very highly cost-effective program, designed to provide 30 million people in this country the opportunity to seek equal justice under the law. It is a program that has earned for itself the strong support of the legal profession. In fact, the ABA, under the leadership of Lewis Powell, took the lead in pressing for its establishment.

Mr. Chairman, I appeared the other day before the board of governors of the ABA. It was quite evident that the ABA still supports with full vigor and enthusiasm the Legal Services Corporation.

In 1981, 6,000 Legal Services lawyers handled 1½ million cases in areas like housing, income maintenance, consumer protection, and family problems. In my own State of Ohio, nearly 60,000 cases were cleared in 1981, at a cost of $118.40 per case, which hardly can get you in the door of most law firms these days. By any standard, that is a bargain.

For reasons that are not clear to me, the Legal Services Corporation has become the target, under this administration, of an ideological vendetta. Legal Services Corporation lawyers have been described as "ideological ambulance chasers," and I would guess that in some instances Legal Services Corporation lawyers have taken up challenging issues that have an impact upon the social mores of the community. And, as I gather from remarks that were made the other day at the ABA board of governors, in many instances Legal

Services Corporation lawyers have taken up the unpopular side of many issues and maybe have involved themselves in sociological and community activist programs that did not sit well with some people in the community. The question was raised, Why is the Government paying for these kinds of services?

The administration has attempted to zero out of two budgets all of the funds for legal services, and yet there is hardly an impartial or objective person who would not agree that if this America is to be the kind of America that all of us want, we not only have to provide for food, clothing, housing, and shelter, but we also have to be concerned with the opportunity of people to have adequate medical services and adequate legal services as well.

There is no other way to do it except the program that is now in place. Frankly, Mr. Chairman, I am not only concerned about the program, I am deeply concerned about the attitude of the nominees before us today with regard to the future of legal services for the poor.

That is not to suggest that all are cut of the same cloth, but it does concern me that, according to reports, on New Year's Eve, the members of this new board, who were recess appointees, met by telephone—by telephone—in an attempt to hold up the Legal Services Corporation 1982 program grants.

What also concerns me about these nominees—and these remarks are not directed at any particular nominee—is the fact that the law requires client representation on the board. The nominees before us today include no clients. It is my understanding that there are 11 members of the board. Ten have already been nominated, and the law requires clients to be represented on the board. That would certainly mean more than the one remaining appointment that would still be available. The law requires that the board be representative of the attorneys providing the legal services. Forty-one percent of those attorneys are women, yet not one of the nominees is a woman attorney.

I am also concerned, Mr. Chairman, about the reports I have seen of potential conflicts of interest on the part of some nominees and open hostility on the part of others to the Corporation and its work.

It bothers me much that one of the nominees wrote a letter when he left the appellate court of California to another member, in which he said: "Your problem is you feel it your obligation to be a professional Mexican rather than a lawyer . . . You must ever champion the oppressed, meaning those who so designate themselves, such as criminals, handicapped, welfare recipients, demonstrators, minorities, and miscellaneous other have nots."

When a reporter from a major American daily inquired on that subject, that nominee explained:

> You know, there are such things as professional blacks, or professional Greeks, professional Dagos, professional Jews—people who put their ethnic concern ahead of everything else.

The same nominee has shown a certain disrespect for the law in his bitter denunciations of the United States and the California Supreme Courts. He was quoted as saying that the California Supreme Court "rules our State like a little junta. The public is getting screwed by all this idiotic obsession of certain of us, supreme courters, judicial counsellors, some appellate judges, governors over litigants' rights."

The same nominee referred to the U.S. Supreme Court decision in the *Bakke* case as "Justice Powell's idiotic distinction between minority status as a quota and minority status as a factor."

Mr. Chairman, the issue we have before us today implicitly includes the whole question of the validity and the continued existence of the Legal Services Corporation, and whether it can continue to operate as a viable part of our Government, or whether it is to be stacked with some board members who really have no commitment to the program itself.

This Senator has seen too many appointments made by this administration to too many Federal positions, high-level positions, of people who, as they took office, indicated their desire to destroy the program. That is not good for America, it certainly is not good for the program, and I think it causes the American people to lose confidence in their government processes.

Unless these witnesses are able to satisfy the committee as to their commitment to the program, I would have difficulty in giving my approval to their nominations, notwithstanding the fact that I might, in individual cases, consider them to be extremely capable people. I believe the issue before the committee is not only the qualifications of the individuals but their commitment to the Legal Services Corporation or, if they have some modifications thereof that they believe are appropriate, in what manner they would suggest those modifications be made.

Mr. Chairman, having said that, I look forward to hearing from the members and inquiring of them. I should point out to the Chairman that I am committed to speak at 11:30 in one of the other buildings and I may have to leave. Is it the Chair's intention to continue the hearing beyond the noon hour or to return this afternoon?

The CHAIRMAN. We want to finish as soon as we can. The Chair only has a few questions, so I think there will be an opportunity for you to ask questions before 11:30.

I share your concern. I voted for the Legal Services Corporation twice. Then as I watched the other extremes take over and do some of the things that they did, which really did not in my opinion help the poor or help millions of people who probably needed help, for which we were spending well over $300 million, I got equally incensed the other way. I do share Senator Metzenbaum's feelings that as members of the board, you have to be committed to serve the board and to fulfill the obligations as articulated in the legislation of the Legal Services Corporation.

With regard to the letter of Senators Kennedy, Pell, Riegle, Randolph, Eagleton, and Metzenbaum to you, Mr. Olson, I take it these transition documents have not been given to the committee. Is there any reason why you have not been able to give them to the committee?

Mr. OLSON. Yes, Mr. Chairman. With reference to Senator Kennedy's point before, I received the letter of April 14th on Friday afternoon of last week, on the 16th, by hand delivery. I have transmitted that request to the persons in charge of congressional relations at the White House for purposes of their decision as to whether they are going to be able to release or not release that particular document.

Let me say by way of background that the transition report, which I was involved with in writing for the Office of the President-elect, was a document which was prepared with certain restrictions upon it.

The **Chairman**. As I understand, it was prepared for Mr. Meese, who was a private citizen at that time, for the transition purposes of the President. When it was prepared, he collected the documents and has kept them himself. Am I wrong on that?

Mr. **Olson**. The situation is that when we were asked to participate in the transition, were all requested to give a pledge that the reports and all the other work that we did would be in confidence; it was for the President-elect and his senior advisors. Accordingly, at that time, to Mr. Timmons, Mr. Meese, Mr. Brady, and many other people at that time, I committed, as did others, not to disclose those reports myself. If the administration would do so, that would be their prerogative, but I would feel that I am honorbound, by virtue of that, not to discuss it.

The **Chairman**. As I understand it, you are capable today of testifying as to the three recommendations of the report, including the one not to continue the Legal Services Corporation. Is that one of the recommendations?

Mr. **Olson**. If it would be useful to the committee, Mr. Chairman, I would be glad to give an overview of what these reports were all about. I think that might be useful.

The **Chairman**. Yes, but you could certainly give the three conclusions? As I understand it, there were three conclusions in the one report, or were there more?

Mr. **Olson**. Frankly, I am not sure that there was any number of conclusions or anything like that. The document is approximately 120 pages in length, and it was a document that was written by five or six members of the transition team, plus consultants and advisers that we had.

The **Chairman**. So the document would not necessarily reflect your own particular individual viewpoint, and you would be willing to testify concerning your own particular viewpoints with regard to the Legal Services Corporation?

Mr. **Olson**. Absolutely, Senator. I am certainly willing to do that.

Senator **Metzenbaum**. Does the document reflect your own personal viewpoint?

Mr. **Olson**. In the main it does. The document, however, is the amalgam of the work of five staffers who worked very regularly on it, and some advisers and consultants, and certain portions were written by other individuals.

Senator **Metzenbaum**. Did you write a minority opinion?

Mr. **Olson**. No, sir.

Senator **Metzenbaum**. You signed off on the total report?

Mr. **Olson**. Yes, sir.

The **Chairman**. My understanding is, you are prepared to generally discuss your own personal beliefs with regard to the Legal Services Corporation here this morning, in response to any Senator who cares to ask questions about it?

Mr. **Olson**. Yes, sir.

The **Chairman**. I think that is all we can ask for. I do not think we have a right to ask for private documents that are kept for transition purposes for the White House. On the other hand, I would appreciate it if you would testify accurately and objectively concerning any question that may be asked by any Senator here today, but particularly Senators Kennedy and Metzenbaum who will be asking questions.

I have to go and preside over at the floor, so Senator Quayle is going to preside over these hearings. We will set these terms. There will be a 10-minute rule on questions, and Senator Quayle will enforce that rule, but we can go a number of rounds if we need to.

Senator Quayle, do you have any objections to allowing Senator Metzenbaum to go ahead, since he needs to leave at 11:30?

Senator **Quayle**. No. Before I acquiesce, I would like to lay out the ground rules under which the chairman would like to operate. It is my understanding—and I would ask Senator Metzenbaum if he is agreeable to this—that there is a 10-minute limitation, but we can go as many rounds as we want to with these witnesses. The next group of witnesses, who I believe are four, will have 3 minutes to testify, and then we will have 5 minutes of questioning.

The **Chairman**. Three minutes each.

Senator **Quayle**. Three minutes for each of the four witnesses. There will be one panel of four witnesses. Each witness will have 3 minutes to testify, and we will have 5 minutes to ask questions.

The **Chairman**. I think that will be all right, as long as we alternate that.

Senator **Quayle**. If the Chair would like Senator Metzenbaum to go first, he can start.

The **Chairman**. Why not do that, since you do have a problem, and I will turn the gavel over to Senator Quayle.

Senator **Quayle**. Senator Metzenbaum, you may proceed.

Senator **Metzenbaum**. Mr. Paras, I just saw fit to quote some remarks in a letter and some remarks that you had made according to published reports. Are those quotations correct?

STATEMENTS OF WILLIAM OLSON; WILLIAM EARL; GEORGE PARAS; HOWARD DANA, JR.; CLARENCE McKEE; ROBERT STUBBS II; AND HAROLD DeMOSS, JR., NOMINEES TO THE BOARD OF DIRECTORS, LEGAL SERVICES CORPORATION

Mr. **Paras**. They are, sir.

Senator **Metzenbaum**. You are a practicing lawyer, are you?

Mr. **Paras**. I am.

Senator **Metzenbaum**. Have you provided any pro bono legal representation to the poor as a practicing lawyer?

Mr. **Paras**. I have not since I went on the bench in 1969, sir. I certainly did before that.

Senator **Metzenbaum**. Since when?

Mr. **Paras**. 1969. I was appointed to the superior court bench in Sacramento, Calif., in that year. Naturally, sitting on the bench, I did not practice law. I have resumed law practice as of last August.

I am now committed to pro bono work with our local legal services establishment.

Senator METZENBAUM. What did you mean, Mr. Paras, when you said, talking about the California Supreme Court, that they were "ruling our State like a little junta," and then went on to say that, "The public is getting screwed by all this idiotic obsession of certain of us, supreme courters, judicial counselors, some appellate judges, Governors, over litigants' rights." Did you mean that the litigants are getting too many rights? Is that your point?

Mr. PARAS. Yes. In part, I certainly meant that.

Senator METZENBAUM. Would you care to expand?

Mr. PARAS. Certainly, sir. I would welcome all the questions you wish to ask of me. Please do not hesitate.

Senator METZENBAUM. I will not.

Mr. PARAS. I am sure you will not.

I was critical of the Supreme Court of California and have been its critic for a long time. I am critical over the fact that it is inordinately obsessed with criminals' rights, to the point where there is never any finality in a criminal situation, at least not in California. Time and again, I, as judge of the court of appeals, authored opinions which I thought were rational, which were sensible, which were fair to the accused. But remember, sir, having been tried and convicted, no longer is the accused presumed innocent; at that point the rights of the people should come into play, and yet I found the California Supreme Court carrying through its presumption of innocence all the way until years after the conviction had in fact taken place, long after the appeals had been exhausted.

Senator METZENBAUM. You were talking about more than the California Supreme Court, were you not? You were talking about "certain of us, supreme courters, judicial counselors, some appellate judges, Governors * * *." So you really had sort of broadbrushed the fact that litigants have too many rights in the America in which we live today?

Mr. PARAS. Yes, sir. I was talking about the very liberal judiciary, as such, to a point where we have an undisciplined set of litigants who sue for anything and everything.

Senator METZENBAUM. What is your attitude about the Legal Services Corporation? Do you think that it should continue in existence?

Mr. PARAS. Of course, I do, sir. I have never voiced any opposition to the Corporation. I have always voiced and held a great esteem and support for it.

Senator METZENBUAM. Do you feel that it has become too involved in some litigious matters?

Mr. PARAS. Not to my knowledge. It may have. There is controversy regarding that, but that has never been my concern. I do not have any feelings of that sort, no, sir.

Senator METZENBAUM. Given the responsibilty of legal services attorneys to provide access to our system of justice in order to protect the legal rights of poor people, do you feel that that flies in the face of your previous statement concerning litigants having too many rights?

Mr. PARAS. No, sir, it does not. When I say that litigants have too many rights, I mean all litigants. I mean wealthy litigants, poor litigants, corporations, individuals, partnerships, et cetera. This has nothing to do with poverty. Everything that I have been condemned for, sir, does not relate in the slightest to my view on the poor person and my dedication to the fact that a poor person is entitled to be represented where he cannot afford to be represented.

Senator **Metzenbaum**. In your letter to the other appellate court judge, you talk about his being the "champion of the oppressed, meaning those who so designate themselves, such as criminals, handicapped, welfare recipients, demonstrators, minorities, and miscellaneous other have-nots." Doesn't that comes close to being many of the poor, or wouldn't you say that many of the poor are in that group?

Mr. **Paras**. Senator, that letter has to be read in context. It is a 5-page single-spaced personal letter, fraught with emotion from myself to a colleague. That letter is preceded by considerable language which explains precisely what I meant when I was expressing my anguish to him because he had not met up to the standard that I felt he was capable of as a judge. I was berating him because he measured—in fact, I apologized to him today that he is involved in this controversy at all. I am very sorry that that is what has caused all this problem.

My quarrel with him was that when it came time to mete out justice, instead of looking at the merits of the controversy, he would look at the identity of the parties. He would base his decision upon economic grounds. Give me the poor and the downtrodden or whatever; he would make a judgment call, and then his decision would follow based upon that. My dedication—and it is a fierce dedication—has always been to equal justice for all. It matters not to me, and it should not matter to any sitting judge, whether the litigants before him are poor, rich, or where they come from. Justice should be the same for everyone.

Senator Metzenbaum. Yet you seem to take issue with those whom you refer to as "professional blacks, professional Greeks, professional Dagos, professional Jews, people who put their ethnic origin ahead of everything else."

Mr. **Paras**. Yes, sir.

Senator **Metzenbaum**. How do you determine who these professionals are in each of these fields? If they concern themselves with the rights of Italians, are they professional Dagos by reason of that fact?

Mr. **Paras**. If they put the rights of Italians beyond the rights of all Americans, that is just my way of designating them. I am fiercely dedicated to equality in all respects.

Senator **Metzenbaum**. Mr. Paras, I will come back to you with some additional questions, but I would like to ask Mr. Olson some questions.

Mr. Olson, have you had any involvement with the National Defeat Legal Services Committee?

Mr. **Olson**. No, sir.

Senator **Metzenbaum**. You were never involved with that committee at all?

Mr. **Olson**. No, sir.

Senator METZENBAUM. Were you involved with Howard Phillips and the Conservative Caucus?

Mr. OLSON. Well, I know Howard Phillips of the Conservative Caucus. I am not involved with Howard Phillips of the Conservative Caucus.

Senator METZENBAUM. Have you ever consulted with or otherwise communicated with Mr. Phillips or any other representative of the National Defeat Legal Services Committee concerning legal services matters before or since your nomination to the board of directors?

Mr. OLSON. Yes, Senator. There was a question like this submitted by Senator Cranston, which I responded to in this fashion. Since my appointment on December 30, 1981, I have received, I believe, three or four phone calls from Howard Phillips concerning getting a status report as to what was going on with the Legal Services Corporation, all of which he placed and none of which I placed. I have not seen him personally during that period, and that has been the limit of our contact.

Senator METZENBAUM. Is it not a fact, Mr. Olson, that you advocated as a member of the transition team—or whatever this group was that was advising Mr. Meese—that you advocated the abolition of the Legal Services Corporation?

Mr. OLSON. No, sir. The function of the transition team on legal services, as much as the function of the transition team on every single Government agency, was to review the status of a particular agency, to go back and see what kind of pending decisions were in existence before that particular agency, review the statutory basis for it, the regulations, to put together some description of the personalities involved, the people in the agency, and to provide a background briefing book, in essence, for the new administration for purposes of being able to——

Senator METZENBAUM. That is not my question. The question is, Did you advocate the abolition of the Legal Services Corporation?

Mr. OLSON. No, sir.

Senator METZENBAUM. Was Human Events, dated January 16, 1982, wrong when they said, "As a result of a campaign launched by former antipoverty director Howard Phillips and conservative lawyer William Olson, the White House moved quickly, the day before New Year's Eve, to seize control of the Legal Services Corporation, a federally funded agency that has been in the business of encouraging violence, busing, gay rights, progressive education, and a host of other left-wing activities"? Were they wrong?

Mr. OLSON. Well, I suspect you mean with regard to the part I was involved with.

Senator METZENBAUM. Yes.

Mr. OLSON. Yes, it is true that I was called on December, believe it was the 29th—I would have to refresh my recollection—by Pen James, who was the assistant to the President for personnel, with regard to what personnel actions would be required at Legal Services in order for the administration to make appointments and such. I encouraged Mr. James at that time to go forward with this because, as I saw it, as I worked in the transition, I had met with Dan Bradley, then president of the Legal Services Corporation—that was about a year prior, in December 1980—and during a conversation with Dan Bradley, Dan had told me—at least this is my recollection of what Dan had told me—shortly after the first of the year, each year, he would come into the office and sign all grant documents for the ensuing calendar year. In other words, he would basically spend all the money of the corporation, execute all the grants, execute all the contracts, and commit and obligate the funds.

I was concerned that that would be, first of all, at possible odds with the action that this Congress had taken with regard to the continuing resolution passed for the first half of fiscal 1982 and, second, with regard to binding and locking up the ability of this new board. They were going to proceed, and I encouraged them that if they were going to proceed that they do it in time to be able to have this board take a look at the grants and contracts that were going to be issued for all of calendar 1982.

Senator QUAYLE. Your time is up, Senator.

Senator METZENBAUM. I know my time is up. I will hold further questions.

Senator QUAYLE. Gentlemen, I have two questions I would like to ask.

Would whoever is starting the clock please start it so that everyone will operate under the same time constraints?

I have two questions that will demand short answers. So I hope you will be brief in your response.

The first question I want to ask each of you concerns an issue that has been raised about your appointment to the Legal Services Board, and that is the commitment that you individually have to legal services to the poor, a commitment to the statute which says that, from a Federal point of view, there will be funds expended for legal services to the poor. I would like to solicit from you a commitment to that policy and to that statute. Do you have that commitment or do you not? Mr. Olson?

Mr. OLSON. I am very much committed, Mr. Chairman. I do not know if you want short or long answers.

Senator QUAYLE. I want short answers.

Mr. OLSON. Then the answer is yes, sir.

Senator QUAYLE. Well, you can talk for 30 seconds, if you like.

Mr. OLSON. I thought perhaps I have had more than my share of time already, but I would be glad to comment.

Senator QUAYLE. I want to get to each one of your colleagues. I only have 10 minutes, and I have two questions I want to ask.

Mr. OLSON. As an individual and as a member of the bar, I think we have the concept to advance equal justice under the law as a notion, and this is a very effective way for me to carry out that professional and personal responsibility, and I welcome it.

Senator QUAYLE. Mr. Earl?

Mr. EARL. Senator, I am committed to what I think are the two primary congressional intents in the act: number one being equal access to justice, and the second one being quality legal services for the poor. In the short amount of time that I have had as I have traveled around and visited some of the programs and some of the lawyers, I have been increasingly impressed as to the validity of those two objectives.

Senator QUAYLE. Mr. Paras?

Mr. Paras. Senator, I have an unequivocal commitment to the act—I need not say anything more—and to support the Legal Services Corporation.

Senator Quayle. You have an unequivocal commitment to the act and to the statute that provides Federal funding for legal services to the poor?

Mr. Paras. Absolutely.

Senator Quayle. Mr. Dana?

Mr. Dana. Senator, I do as well.

Senator Quayle. Mr. McKee?

Mr. McKee. I do, Senator. As I set forth in my prepared statement which I will submit for the record, I am totally dedicated, and have been all of my life, to fundamental fairness and equal justice under law. I have worked in the legal services program, and will do my best under the statute to carry out its mandate.

Senator Quayle. Mr. Stubbs?

Mr. Stubbs. Senator, I took my oath as the interim appointee without any reservations whatsoever. I have been committed for all of my professional life as an attorney to equal access, to equal justice. I have accepted the appointment with that same commitment: I have no reservations whatsoever.

Senator Quayle. Mr. DeMoss?

Mr. DeMoss. Senator, I believe the Legal Services Corporation is providing a needed and worthwhile service and function. At the present time, it is doing it on the whole on a cost-effective basis. I feel that it should remain in place, within whatever funding limits the Congress determines are appropriate for it, and I will do my best to see that competent and cost-effective legal services are furnished to the poor as a member of this board.

Senator Quayle. My second question, gentlemen, goes to why you desire to serve on the board of directors of the Legal Services Corporation. I do not want the response to be just "because the President asked me to serve." We all like to honor his requests, and it is humbling to be asked by the President of the United States to serve. Beyond the request of President Reagan to have this service on the board, why, personally, do you want to serve on the board of directors? Mr. DeMoss?

Mr. DeMoss. Senator, I think that as a lawyer and as someone who has been involved in the legal profession for 25 years, I recognize the essential need that all persons have access to our judicial system. I think the goal and purpose of the Corporation is extremely worthwhile, and I feel that there is an element of public service where I can contribute here, and in an area where apparently there is a need for resolving certain items of controversy and concern that have arisen about the operation of the Corporation.

Senator Quayles. Mr. Stubbs?

Mr. Stubbs. Senator, I have indicated I have been involved with legal services, in the sense of rendering service to those who could not otherwise afford it, as long as I have been an attorney. I also was involved for some 11 years as a law school professor with legal services, both as a consultant and as a trustee for one of the very first legal services organizations. For the last 10 years, approximately, I have been involved in State government and have developed new attitudes and interests in respect to legal services. It seems to me that the opportunity to serve in this capacity is just one more facet of my whole career approach to this part of it.

Senator **QUAYLE**. Mr. McKee?

Mr. **MCKEE**. First of all, service on the board provides a great opportunity to serve the country. As an attorney, it is a deep honor to be considered for the Legal Services Corporation Board of Directors. And most important is the concern I have always had throughout my career, such as in my work here in the Senate on some of these issues, over the great need we have to eradicate the justice and income gap between persons at the poverty level and other segments of our population. Poor people do not get the right opportunities, especially in terms of the law. I have always considered the law a "key that opens the door" to many other economic and educational opportunities. The Corporation, the statute and its regulations provide a great door to be opened to assist many millions of people. If I am entrusted by confirmation, I will do my best to carry out that mandate. That is why I want to serve on the Board.

Senator **QUAYLE**. Mr. Dana?

Mr. **DANA**. Senator, I believe in the need for equal justice. I believe in the mission of the Corporation. I think that professionally the issues the Corporation is dealing with are at the very center of my professional commitment and the commitment of all lawyers, and frankly, I enjoy public service.

Senator **QUAYLE**. Mr. Paras?

Mr. **PARAS**. Senator, I do not think there is anyone in this room who knows and appreciates the need of a poor person for legal help in an appropriate time than I do. I was probably, of everyone here, the most poor at one time and for a rather considerable time. During the years 1954 to 1956, almost exclusively in my community, the Sacramento County Bar Association, as secretary I administered and handled the legal aid program, along with the lawyers reference program. I know legal aid. Thereafter, while I practiced law, until the time I went on the bench, I was doing pro bono work on a constant basis, probably an average of 1 day to 2 days per month devoted to it.

Because of that and because of my years of experience on the bench, I think I have learned enough that I can assist in guiding such a great program such as the Legal Services Corporation so that the poor will receive the maximum benefits to which they are entitled.

Senator **QUAYLE**. Mr. Earl?

Mr. **EARL**. Senator, I am interested in serving at this particular time because I think the Corporation is going through a very difficult period. There is great uncertainty regarding how it is going to function and how it is going to be funded. I think it is going to require some innovation. As a representative of the Florida bar, which has been particularly innovative in the area of legal services, I think I can add some special expertise. We have the first interest-on-trust accounts to fund legal services in the country, which started this year. That and other programs the Florida bar has undertaken may be particularly useful to the Corporation.

Senator, I, too, look forward to the opportunity to work with the Legal Services Corporation during this period to stimulate the maximum effectiveness in the delivery of legal services and to stimulate private bar involvement through individual attorneys who contribute their time and effort. I have been active in other organizations, such as victims assistance legal organizations, which I believe are areas in which the Corporation should also be involved, protecting the rights of victims in civil matters. I look forward to this great opportunity to improve the delivery of legal services to the poor.

Senator **QUAYLE**. Thank you, gentlemen.

Senator Eagleton?

Senator **EAGLETON**. Thank you, Mr. Chairman. I have an opening statement, and I ask unanimous consent that it be printed at an earlier point in the record.

Senator **QUAYLE**. It will be.

Senator **EAGLETON**. Mr. Paras, I would like to get back to this quote that you gave, apparently in a telephone interview. I have an article from the St. Louis Post-Dispatch of February 3, 1982, by William Freivogel, Post-Dispatch Washington Bureau.

It is quite a long article. I ask unanimous consent that the full article be printed in the record as though read.

The **CHAIRMAN**. It will be incorporated in the record as if read.

[The material referred to follows:]

St. Louis Post-Dispatch
2-3-82

Legal Services Corp. Threatened By Agenda Given To Reagan Appointees

[illegible] taking over the federal bureaucracy a year ago, President Ronald Reagan's administration has made sharp changes in the funding, the performance, and even the mission of many agencies, large and small. In some cases the president has given control of an agency to those who [illegible] in private life. A [illegible] Post-Dispatch Washington correspondent has examined how [illegible] has affected [illegible] agencies and [illegible]. This is the second of six articles.

By William Freivogel
Post-Dispatch Washington Bureau

WASHINGTON — The Reagan administration expects its new board at the Legal Services Corp. to consider sweeping changes, including a plan to turn most of the agency's money over to the states, a well-informed administration official told the Post-Dispatch.

Legal Services sets policy for the federal program providing lawyers and legal aid for poor people.

The official said President Ronald Reagan had selected a board that he hopes will remake the corporation from the inside while the administration continues its efforts to get Congress to abolish it.

The official, who asked not to be named, helps plan administration strategy on the Legal Services Corp.

Reagan failed to persuade Congress to abolish the corporation last year. But he managed to cut its budget by 25 percent and propose new restrictions on the kinds of suits it could file.

Those cuts already are being felt. The program in St. Louis, for example, reports it has had to turn away clients it previously had served. And nationally, the number of lawyers in the program is expected to decline to 4,200 from about 6,200 over the next year.

Few on Capitol Hill expect the administration to be any more successful this year than last in getting Congress to abolish the corporation and turn its funds over to the states. But the administration's agenda for its new board could achieve the same effect.

What the administration is hoping for ultimately is for the states to negotiate contracts with local bar associations to pay private lawyers to represent the poor. This would weaken or perhaps eliminate the current system, under which most legal services on behalf of the poor are provided by full-time lawyers on the corporation's staff.

The administration wants to turn over the functions of the Legal Services Corp. to private attorneys, he said, but not through the so-called "Judicare" program. Under that program, Legal Services would reimburse private lawyers who represented poor people. Judicare, said the official, "is nothing more than medicare for lawyers."

The administration official said it would make more sense for the federal funds to go to the states directly because they would be tougher than the corporation has been in negotiating arrangements with private bar associations. States would require bar associations to furnish more free service than the corporation has been able to do, he said.

The official said that another top priority of the new board would be the elimination of the 17 specialized centers — called backup centers — that seek legal reforms aimed at helping broad groups of poor people. One such center, specializing in juvenile law, is at St.

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Louis University.

The administration believes that these centers have been "armies of the left," the official said.

The overall aims of the agenda the administration has put before the Legal Services board are to provide "one-on-one" legal services for the poor and to bring an end to the filing of broader, class-action suits designed to change government policy, the official said.

Legal Services advocates contend that the class-action suits are valuable for helping the poor. For example, a class-action suit filed by Legal Services attorneys in St. Louis won higher welfare benefits in many states.

Some advocates contend that states should not be entrusted with the funds for the program because state agencies are themselves the subject of many legal grievances of the poor.

Few expect the administration to be any more successful this year than last in getting Congress to abolish the corporation. But the administration's agenda for its new board could achieve the same effect.

Dan Bradley, outgoing president of the corporation, said the new board probably could turn the corporation's money over to the states, but not without contradicting the intent of Congress. The law says that state governments can receive money from the corporation only if the board makes a "special finding" that legal services will not be adequately provided otherwise.

This was written into the law because several states, including California during Reagan's term as governor, were in contention with the legal services programs in the late 1960s. The intent of the law was to keep the states from interfering in the programs, Bradley said.

The new board that Reagan has appointed to run the corporation is controlled by men who have opposed the corporation in the past or have opposed suits filed on behalf of the poor or minorities. Two have some background of supporting Legal Services suits.

Reagan has appointed 10 of the 11 members now on the board, and has the power to appoint the 11th.

Here are the backgrounds of the new board members and the views of some of them on Legal Services.

William Olson, acting chairman, is a Washington lawyer and chairman of the Fairfax County, Va., Republican Party. During the Nixon administration he worked in the Office of Economic Opportunity under its director, Howard J. Phillips. Phillips tried to cut back the legal services program then and has since become the leading critic of the Legal Services Corp.

When he headed the Reagan transition team on legal services last year, Olson favored abolishing the corporation, some team members said. Olson declined to comment on that report.

George E. Paras, a former California appeals court judge, said in an interview that he had initially opposed government involvement in legal services.

He said when he was a young lawyer, the bar in Sacramento provided legal services for the poor without government assistance. He said he would prefer that approach, but added, "I just don't think your could go back to that once the government begins paying for things like that."

Paras recently has been criticized for a letter to a former colleague on the appeals court, Cruz Reynoso, opposing Reynoso's elevation to the state supreme court. In the letter, Paras said Reynoso's social views were similar to those "first proclaimed by Karl Marx."

"Your problem," Paras wrote Reynoso, "is that you feel it is your obligation to be a professional Mexican rather than a lawyer. Thus you must remain true to the ideals consistently tossed about by the leaders of the so-called Mexican movement . . .

"You must ever champion the 'oppressed,' meaning those who so designate themselves, such as criminals, handicapped, welfare recipients, demonstrators, 'minorities,' and miscellaneous other have-nots."

Paras defended the letter in a telephone interview. "You know," he said, "there are such things as professional blacks, or professional Greeks, professional Dagos, professional Jews — people who put their ethnic origin ahead of everything else. That's what I meant."

Paras also opposed affirmative action programs in an appeals court opinion declaring illegal an admissions policy favoring minorities at the Law School of the University of California at Davis.

Robert Sherwood Stubbs, a native of University City, Mo., and executive assistant to the attorney general of Georgia, has directed that state's defense against numerous Legal Services suits, including a challenge to conditions in Georgia state prisons.

He said he questioned whether the corporation should file class action suits, sue governments, lobby for legislation or file suits on behalf of criminals. The corporation is prohibited from representing people in criminal cases. But it has traditionally been able to represent prisoners in civil suits, as was the case in the Georgia prison suit. A court found prison conditions unconstitutional and ordered the state to remedy them.

David E. Satterfield, a Democrat, represented the Richmond, Va., area in Congress for 16 years until his retirement in 1980. He said in an interview that he knew little about the Legal Services Corp.

He said he did not recall how he had voted on legal services issues in Congress. Records show that he opposed the establishment of the corporation in 1974. Thereafter, he voted for every proposal to restrict or abolish the corporation.

William F. Harvey, former dean of the Indiana University Law School, wrote a brief to the U.S. Supreme Court in the landmark Bakke case challenging affirmative action programs. He also has represented suburban Indianapolis school districts attempting to avoid being drawn into a metropolitan school desegregation plan.

Marc Sandstrom is executive vice president and general counsel of San Diego Federal Savings and Loan, which is being sued by a California legal services program. The suit accuses the bank of permitting foreclosures on home loans when the homeowners did not keep up with payments on home improvement loans.

Harvey, Sandstrom and Paras have been advisers to the Pacific Legal Foundation, a not-for-profit law firm that describes itself as dedicated to the values of free enterprise, private property and limiting the role of government.

The president of the Pacific Legal Foundation, **Ronald A. Zumbrun**, is expected to be appointed to the 11th seat on the Legal Services Corp. board and to be named its chairman.

Zumbrun was deputy director of legal affairs for the California Department of Social Welfare when Reagan was governor. He defended the state against several suits filed against it by Legal Services programs.

One Reagan appointee with some Legal Services experience is **Howard H. Dana Jr.**, who was Reagan's campaign chairman in Dana's home state of Maine. Dana helped Legal Services lawyers win a suit in the Supreme Court forcing the state to pay for legal fees in some civil rights cases.

He is one of the few Reagan appointees who said he had asked for a job on the corporation.

The other Reagan appointee who has had some background with Legal Services is **Clarence McKee**, a Washington lawyer who worked in Reagan's presidential campaign. He worked at a Legal Services program in college. Later he was an aide to former Sen. Jacob K. Javits, R-N.Y., and Sen. Charles McC. Mathias Jr., R-Md. He also was an assistant to Benjamin L. Hooks, executive director of the NAACP, when Hooks was a member of the Federal Communications Commission.

McKee said he favored the concept of legal services for the poor, but was not certain whether the system of having a paid staff of lawyers was the best way to provide it. Lawyers in private practice should have more of a role, he said.

Ann Slaughter of St. Louis was appointed by Reagan to represent legal services clients. She said she did not know much about the Legal Services Program but thought the poor should have access to lawyers.

For the last 10 years, Mrs. Slaughter has worked with organizations helping victims of crimes. It was through that work that she came into contact with the Republicans who recommended her to the White House. She and McKee are the only blacks among the Reagan appointees to the board.

The 10th Reagan appointee is **Harold D. DeMoss**, a Houston lawyer who specializes in real estate and oil and gas law

Reagan could have appointed a new board for the corporation last summer. But an administration official said the president delayed to avoid undercutting his attempt to abolish the corporation.

That delay gave the old board and its staff a chance to lobby in Congress successfully for continuation of the corporation. In addition, the policies of the old board remained in effect.

Until appointing the new board, the only impact the Reagan administration had on the agency was indirect, coming mainly in its support of legislation forcing the program's advocates to accept a 25 percent budget reduction.

> ***The new board that Reagan has appointed to run the corporation is controlled by men who have opposed the corporation in the past or have opposed suits filed on behalf of the poor or minorities.***

The primary impact of those cuts is being felt in the legal services offices across the country, with the Washington staff of the corporation having been reduced by 45 percent

Programs such as the Research Institute for Legal Assistance, which financed 4- to 5-month studies of legal problems of the poor, have been cut out. The corporation's staff training program also is being phased out. And the National Clearinghouse on Legal Services, which publishes information about the legal problems of the poor, will receive no more funds after 1983.

It is uncertain how far or fast the new board can go in reshaping the corporation. Bradley was authorized by the old board to sign contracts in December with all legal services agencies, including the 17 specialized centers. The new board called a hasty meeting on New Year's Eve to strip Bradley of the power to commit funds. But by that time the contracts had been signed

Olson says he is seeking a legal opinion on whether the new board must honor the contracts. Meanwhile, Bradley continues to send out checks based on the contracts.

NEXT: New directions for the Federal Trade Commission.

Senator **Eagleton**. In the middle of the article, it says, "Paras defended the letter in a telephone interview . . ." referring to the letter that was previously referred to in your exchange with Senator Metzenbaum. "You know," he said, "there are such things as professional blacks, or professional Greeks, professional dagos, professional Jews—people who put their ethnic origin ahead of everything else. That's what I meant." Did you say that over the telephone?

Mr. **Paras**. Yes, I said it in response to the question, What did I mean when I used the phrase "professional Mexican." That was my answer.

Senator **Eagleton**. Define for me a "professional black." What do you mean by that?

Mr. **Paras**. It would be someone who dedicates his entire life to the black causes, not for the sake of the black causes alone by way of service but by way of putting aside all considerations of the good of America as a nation and all its people for the benefit of the one specific racial group.

Senator **Eagleton**. Would you say that Martin Luther King was a professional black?

Mr. **Paras**. I do not think so, sir. He was looking for the good of the entire country. Of course, he had to protect his people and do whatever he could to bring them up. No, I do not think so.

Senator **Eagleton**. Would you say that Jesse Jackson is a professional black?

Mr. **Paras**. Oh, I do not know. I do not wish to judge Jesse Jackson as a professional black or anyone else really, any one of the black leaders.

Senator **Eagleton**. I do not blame you for not wanting to judge it, Mr. Paras, but you are the man who said it.

Mr. **Paras**. All right.

Senator **Eagleton**. What about Benjamin Hooks: is he a professional black?

Mr. **Paras**. I will not answer that. I am in no position to say that, sir.

Senator **Eagleton**. So you are in doubt as to whether Benjamin Hooks is or is not a professional black?

Mr. **Paras**. I simply will express no opinion on that.

Senator **Eagleton**. Name me any professional black that you have known in your life.

Mr. **Paras**. I do not know that I want to name anybody by name or that I even can name anybody by name, but there are certain black leaders who simply work upon the fact of blackness, on the racial factor, and that is what they are obsessed by, and frankly end up breeding considerably—not hatred—well, possibly hatred, and racial prejudice, and a hatred between blacks and whites and so forth.

Senator **Eagleton**. Would you say that former Senator Javits was a professional Jew?

Mr. **Paras**. No.

Senator **Eagleton**. What about former Senator Ribicoff?

Mr. **Paras**. I do not think so. Frankly, I do not know them that well. I simply again am not going to say that.

Senator **Eagleton**. What about Senator Metzenbaum: is he a professional Jew?

Mr. **Paras**. Of course he is not.

Senator **Eagleton**. Name me a professional Jew that you have known in your life.

Mr. **Paras**. I do not think I have known one.

Senator **Eagleton**. Did you ever read of one?

Mr. **Paras**. No, not in the sense in which I used the term, Senator. I am using it in a pejorative sense.

Senator **Eagleton**. Pejorative?

Mr. **Paras**. Yes. Obviously.

Senator **Eagleton**. All right. Let us get on to professional dagos now. Would Joe Garagiola be a professional dago?

Mr. **Paras**. Oh, I do not think so.

Senator **Eagleton**. Would Yogi Berra be a professional dago?

Mr. **Paras**. No.

Senator **Eagleton**. Former Governor John Volpe of the Commonwealth of Massachusetts, was he a professional dago?

Mr. **Paras**. I did not even know he was an Italian, sir.

Senator **Eagleton**. Name me a professional dago that you have met?

Mr. **Paras**. I do not know any professional dagos.

Senator **Eagleton**. Name me a professional dago that you have read about?

Mr. **Paras**. I am not prepared to give you an answer to that question, Senator.

Senator **Eagleton**. Let us get on to professional Greeks. Would Senator Sarbanes be a professional Greek?

Mr. **Paras**. I don't—no, I do not know.

Senator **Eagleton**. Would Senator Tsongas be a professional Greek?

Mr. **Paras**. I do not know him either. I do not think he is. I think that Senator Tsongas is very dedicated to America in general. He is not dedicated to Greek causes solely. He is not dedicated to Cyprus alone, for example, to the example of valid considerations for the welfare of the United States.

Senator **Eagleton**. You are of Greek ethnic origin, are you not?

Mr. **Paras**. I am, yes.

Senator **Eagleton**. Are you a member of the Ahepa?

Mr. **Paras**. No.

Senator **Eagleton**. Do you know what Ahepa is?

Mr. **Paras**. Certainly.

Senator **Eagleton**. It is a group of Greek Americans who band together for benevolent and civic causes. Do you know any members of Ahepa that you consider to be professional Greeks?

Mr. **Paras**. I suppose I have known some of them, yes.

Senator **Eagleton**. Could you name one or two for us?

Mr. **Paras**. No, I am not—Senator, if you force me to, if I am going to be held in contempt for not doing so, I will name a few, but I——

Senator **Eagleton**. But the substance of your testimony then is that you could name some professional Greeks?

Mr. **Paras**. I think so, yes.

Senator **Eagleton**. But you cannot name any professional Jews?

Mr. **Paras**. No.

Senator **Eagleton**. You cannot name any professional blacks?

Mr. **Paras**. No.

Senator **Eagleton** You cannot name any professional dagos?

Mr. **Paras**. No.

Senator **Eagleton**. If you cannot name any, and you have never met any in these three categories—professional Jew, professional black, professional dago—if you have never read about any, what, out of decent civility, caused you to utter that sentence?

Mr. **Paras**. It was an explanation that I was supplying to a reporter for a term that I had used in a publication that had, by that time, become public.

May I ask you something, Senator?

Senator **Eagleton**. Sure. Ask anything you want, Mr. Paras.

Mr. **Paras**. I realize you are the one to ask the questions, but have you read my entire letter to Judge Reynoso?

Senator **Eagleton**. No, I have read excerpts of it, but I will take time to read it.

Mr. **Paras**. Before you vote, sir, I will ask you——

Senator **Eagleton**. If your verbal explanation to Mr. Freivogel, in explanation of your letter, is any indication of how you think—that is, if the letter was so incendiary by its content that you had to explain it to Mr. Freivogel—and it says "Paras defended the letter in a telephone interview" and then uttered this quotation, it must be quite a letter if your verbal explanation of it is as incendiary and as reckless and as defamatory as those words you uttered.

Mr. **Paras**. Senator, I will ask you to read the letter in its entirety.

Senator **Eagleton**. I will read it.

Mr. **Paras**. If you conclude that I am a bigot or a racist, obviously you should vote against my confirmation.

Senator **Eagleton**. You believe the Bakke decision was "idiotic"?

Mr. **Paras**. I think it is terribly, terribly wrong, yes.

Senator **Eagleton**. What do you think about the concept of affirmative action?

Mr. **Paras**. You will have to define it for me, sir, before I can answer that. That term has been misused so terribly that I can be talking about apples and you can be talking about oranges, and we will not have a meeting of the minds.

Senator **Eagleton**. Well, let us define it this way: that in matters relating to employment, whether in the public or private sector, or in matters related to promotion within either the public or private sector, that the employer, be it a Government or a private corporation, shall aggressively seek out, recruit qualified people described to be minorities—blacks, Hispanics, women, the handicapped, et cetera—to aggressively seek out qualified individuals from those groups to serve in these assigned duties, either as a job beginning or as a job promotion.

Mr. **Paras**. I am fully in favor of that.

Senator **Eagleton**. Fully in favor of that.

Mr. **Paras**. Do you understand, sir, what it is that I oppose and what many call affirmative action?

Senator **Eagleton**. Go ahead.

Mr. **Paras**. That is the situation where merit is set aside and the black or the Chicano or other minority is then given a position which objectively he does not merit vis-a-vis someone else who is competing for that position. To the extent that affirmative action is so defined, I am very much opposed to it, and that is what the Bakke decision dealt with, and to that extent the Bakke decision is wrong. It is un-American, and——

Senator **Quayle**. Senator, your time has expired.

Senator **Eagleton**. My time is up. We will go back to that later.

Senator **Quayle**. Senator East?

Senator **East**. Mr. Chairman, thank you.

Gentlemen, I wish to congratulate you for your nominations.

Mr. Chairman, I would ask unanimous consent that my statement be placed in the record. I also have some questions that I would appreciate the nominees answering for me, if that can be made a part of the record.

Senator **Quayle**. Your statement will be placed in the record at an earlier point and your questions will be submitted to the nominees.

[The questions referred to follow:]

Questions for the Nominees to the Legal Services Corporation Board of Directors from Senator East

1. As a matter of public policy, do you believe that direct federal funding of programs that provide free attorneys is the most appropriate method of providing indigents with access to judicial remedies? If not, what other alternatives do you believe are more appropriate?

2. As a matter of public policy, should the Legal Services Corporation be precluded from awarding grants to organizations that directly or indirectly lobby elected representatives? If so, please explain, what restrictions, if any, you believe should be placed on such lobbying activities?

3. Under present law, can Legal Service grantees indiscriminately lobby elected representatives? If grantees are restricted in their discretion to select matters on which to lobby, describe those restictions. As a matter of policy, what action, if any, should the Corporation take against grantees who abuse these restrictions? What action can the Corporation take under present law against grantees.

4. As a matter of public policy, should the Legal Services Corporation or its grantees be allowed to use federal funds to lobby elected representatives against efforts to abolish the Corporation? Can the Corporation or its grantees engage in such activities under current law? What steps should and can the Corporation take against grantees that engage in such lobbying?

5. As a matter of public policy, what restrictions, if any, should be placed on the use of federal funds by Legal Service Corporation grantees in (1) selecting clients to whom services will be offered, and (2) the conduct of the case after litigation is initiated? What restrictions currently apply under the present law? What action should and can the Corporation take against grantees that violate any existing restrictions?

6. As a matter of public policy, should Legal Service Corporation grantees have the discretion to solicit clients in order to obtain a plaintiff with the standing to litigate a legal claim the successful resolution of which the grantee concludes would be in the "best interests" of "poor people" in general? What restrictions, if any, should be placed on grantees to prevent this practice? What restrictions, if any, exist under the present law that prohibit such practices? What should and can the Corporation do to grantees that violate such restrictions?

Senator EAST. Mr. Chairman, then I would just like to take my few minutes here that I have to make several observations in what time we have and to elicit their response here.

What I would like to do is just discuss a little bit the role of the Legal Services Corporation. Maybe I could take just a minute to state my concern about it, and perhaps you might have some suggestions as to how we could correct it. First, in a time of great budgetary restraint, we are always trying to find ways to cut costs. That is a significant problem with the Legal Services Corporation as well as with anything else.

A second concern I have with the Legal Services Corporation is that, whatever administration the Corporation controls might have the tendency to politicize it. This relates to another concern that I have, in that the Corporation tends to break down what I would call the traditional lawyer-client relationship, which instead of a sought-out lawyer dealing with a client on an individual basis, it is a federally-funded law firm that goes out and seeks its own clients for purposes of promoting certain political ends.

It could occur either way: conservative, liberal, right, left. I am not suggesting that anyone would have a monopoly on the virtue of wisdom here. My concern is whether you do not then see a very serious breakdown of the traditional lawyer-client relationship.

As one gentleman who is negative on the Legal Services Corporation, I do not look upon it as a permanent solution to the problem. I think it would be unfortunate if we did so accept it as a permanent solution to the problem of providing legal services to those not able to pay in the United States.

For example, you are all aware that it used to be that the established bar would undertake a pro bono obligation as a professional responsibility. I think in this new era of budgetary restraint and voluntarism, we ought to try to reinstitute that, lest the professional bar say that the Corporation is in lieu of pro bono services. There is no way we can fund all of the legal services in a period of budgetary restraint that every person who cannot afford it in this country might need. We cannot do it. We give the American people a sense of false security to think we can do it strictly out of the Federal budget; we cannot do it.

Again, I want to avoid politicizing the Corporation. I want to know whether we ought not again try to move us back in the direction of greater pro bono work in this area. Then the final result of that, I would like to think, would be to restore the traditional lawyer-client relationship and, I would submit, in the long run give higher quality service to the indigent and in greater quantity than you can do under a program of this particular type. If we cannot do it through purely pro bono work, I would suggest we might give tax incentives for young lawyers, beginning lawyers, to do it.

I want to get back to the private sector emphasis. Historically, the job had been done that way, and with encouragement, leadership, and direction, I am not sure it could not continue to be done.

If the philosophy is sound, details take care of themselves. I am a little bit concerned, that as we just focus on "the Legal Services Corporation" we would say it is the law, it is here, and we have to administer it. But we may lose sight of where we ought to really want to go, as a matter of public policy, in dealing with this problem of helping the indigent and those who cannot pay.

I would appreciate it, Mr. Olson or any of you gentlemen as we move down the line here quickly, because time fleets on, if you would indicate what would be your thoughts generally on the philosophy of the Legal Services Corporation or a particular facet of it as I have mentioned.

Mr. Olson. Senator, having just read your article in the Inter-Collegiate Review, I understand your concept of "the details taking care of themselves," and I think there is a lot of truth in that. I would like to say, though, that in this area we have had in the past the corporation under the control of various boards that have, in my opinion, not put a high enough priority on stimulating pro bono activity. I have been going back through minutes and reviewing things. I have been of the opinion that in the past, when the Congress has mandated and directed pro bono involvement, sure there has been a response but indeed the initiative had not come from the corporation where it should. I think we have to get back to that in order to maximize available services. Federal funds will never be able to meet the need, and only if we use those funds to "prime the pump," as it were will be able to truly meet the need of the indigent in this country.

Senator East. So you would look upon it as having that activist role, to try to encourage greater pro bono work in this area?

Mr. Olson. That should be part of our mission, yes, sir.

Senator East. Thank you.

Mr. Earl. Senator, I concur that there is more need for legal services out there than the Legal Services Corporation can ever provide. I think that is clear. If you talk to anyone in any program, they will tell you that they just have to turn people away; they cannot handle them all. There are some demonstration projects in Boston, for example, the Boston volunteer lawyers program, with a relatively small funding from legal services, they go out and recruit pro bono counsel. They have been very effective, very efficient at that, doing a fine job. They have some seed money, if you will, a little support money, to fund a staff function for the lawyers.

The history in a lot of cases that I have been exposed to is that, in just a pure pro bono program that I have read about in some of these studies, they need to have some kind of staff funding; otherwise, it is just one lawyer operating in a vacuum by himself. There is no quality review, and it does not hold together. I think there needs to be some more innovation in the area, and I think perhaps some of the 10 percent seed money which is now being devoted to the private bar, I think we need to see how that is digested: if it is digested efficiently, if we are getting better services or worse.

Senator **East**. So you agree with Mr. Olson, that this would be a good idea, to see if the Legal Services Corporation cannot stimulate a more positive and extensive response, say, from the professional bar. It is a way of picking up the slack, since the Legal Services Corporation cannot possibly have sufficient funds to do it all alone.

Mr. **Earl**. Yes, sir. There is a reservoir of good will out there, lawyers who do not really know the Legal Services Corporation, its goals and objectives, who need to be actively recruited to become part of the process. I think that is a good use of Legal Services money.

Mr. **Paras**. Senator, in the years 1954 to 1956 to which I referred, in Sacramento County, we had of course no federally funded legal aid nor publicly funded at all; it was done strictly by the bar association, with dollars that came from membership contributions. And in addition to that, what we did with that was to use volunteer lawyers so that the legal aid office was staffed every single day of the operating week by an attorney who volunteered services.

That was done in conjunction with a lawyer referral program by which those same attorneys whose services were used were also the ones to whom the cases were allocated that were paying cases. It was a beautiful program for 3 years. I administered this. I can assure you that no poor person in Sacramento County was deserving of legal help who did not receive it.

After that, I left. I did my incidental pro bono work, but I did not do it on a formal basis. Then the next thing I knew, about 6 or 7 years later, the Government had stepped in. The first question that I ask, now that I am getting back into it or hopefully will get into it, was: What happened to the bar? What happened to its responsibility to the poor, which is its sworn oath?

I discussed it with Don Greaseman, who is the director of our own northern California legal services association. He is now working on this 10-percent program, with which you are probably aware, and has devised a program, and they are hoping to get back to it. But he is very pessimistic about ever going back to the days when the bar will fully take on that responsibility once more.

Just from everything I have heard, I doubt very much whether that will happen. I certainly will want to work for it. I would like to see the bar take it on, to relieve the public of the responsibility. If it does not happen, the public will have to continue to bear it under the Legal Services Corporation or whatever other medium is appropriate.

Senator **East**. Mr. Chairman, I realize my time is up. I was just wondering if the other gentlemen, in responding to my written questions, could include a comment on their attitude on this theme we have been developing here, as to what they think would be the overall sense of the legitimate role of the Legal Services Corporation, other than providing what it has been doing. I am thinking of trying to stimulate greater activity among the professional bar, the seed money concept, the leavener, or whatever you wish to call it.

Senator **Quayle**. Senator, they could do that, or if you are going to stay for the second round, you could continue your questioning.

Senator **East**. Unfortunately, I have another obligation at noon, so I will not be available to ask those questions.

Senator **Quayle**. Then we will request them to answer that question.

Senator **East**. I appreciate your time problem. If they could do that, I would greatly appreciate it, in addition to the other questions I have already submitted.

Senator **Quayle**. I certainly appreciate your cooperation in abiding by the time.

I have one other question on the second round. Some of the criticism we have had of Legal Services Corporation in the past is that it has become politicized. It is more interested in the politics of legal services, rather than serving the poor. What assurances can you give this committee that the board will be left free from political influence? Mr. Olson, do you want to start?

Mr. **Olson**. Yes, sir. Whenever you have litigation, you have the potential for abuse if one side is pressured in any way, or attorneys or clients are pressured. Certainly, that is a very sensitive area with regard to the Corporation. I would not know how to answer the question, other than to say that for myself I would not allow myself to be subject to political pressure, nor would I tolerate its existence if I would see it. Other than that, I am not sure what I could do, but I would be willing to. I believe in the principle.

Senator **Quayle**. Do you believe that this has been a problem: The politicizing of the Legal Services Corporation?

Mr. **Olson**. I think, basically, there are two different concepts, Senator, one of which has to do with the board being politicized—in essence, taking instructions from the Congress or from the Executive, which of course we cannot do. The other problem would be if the individual staff attorney, in attempting to fulfill his own agenda, his own personal political agenda by the kinds of cases that he is willing to take and how he pursues them.

To the extent that we are discussing the latter problem, I think that is a problem. It is a problem largely of priority setting. My own priorities would be to insure that every person who came in the door was served before the "Great Cause" would be pursued in the interest, and particularly the private interest, of the staff attorney.

Senator **Quayle**. Mr. Earl?

Mr. **Earl**. Senator, I think the structure of the entire act, in terms of how it structured a D.C. corporation, an insulated board is set up to provide for and obtain independent judgments of lawyers and others on that board. I think that any partisan injection there would be totally inappropriate to that concept.

Senator **Quayle**. Mr. Paras?

Mr. **Paras**. Senator, I have seen no political influence thus far on the board, as far as the current directorship, the one with which I have worked. I therefore see no need to do anything about it. If something should arise in the future, I will do like Bill Olson.

Senator **Quayle**. You do not think there is a risk of being politicized?

Mr. **Paras**. No, no.

Senator **Quayle**. You do not see any problem to that?

Mr. **Paras**. No. Every one of us has taken an oath to support the act.

Senator **Quayle**. Do you think there has been a problem in the past with politicizing the Corporation?

Mr. **Paras**. No, I do not know. I am answering your question. I do not see any fear that this board is going to do anything of the sort.

Senator **Quayle**. I am talking about the past. Do you think there has been any politicizing in the past of the Legal Services Corporation?

Mr. **Paras**. I only heard it in one respect, which might have been political, and that is where Congress has, by amendment, inserted some requirement in the provision of legal services and the board has then taken a position contrary to that requirement. I did run across in some of the literature that I have read some indication that this had happened. If indeed that did happen, of course that has to be a politicization of the board.

Senator **Quayle**. Mr. Dana?

Mr. **Dana**. Senator, if you mean by politicizing that the President or the administration has influenced the prior board, I am unaware of that, other than through the appointment process. It has not, so far as I am aware, influenced this board. It would be wrong if it attempted to do so, and I am confident that it would be rebuffed. Although we would want the Senate and the House to support whatever appropriations we request, we would not, except through the legal process, succumb to pressure from the Senate or the House.

Senator **Quayle**. Mr. McKee?

Mr. **McKee**. Yes. The whole purpose of the creation of the board was to insulate the whole concept from politics. That is what got us in all the controversy several years ago. I definitely do not see any problems with the political involvement with this board at all. I have heard the accusations, and I understand Senator East's point, in terms of out in the field there have been some concerns raised on both sides about politicization, about politics being involved in positions, and does the lawyer go to the client or the client come to the lawyer. That is the concern of some persons, but in terms of the board, this board, there has not been. Some people seem to think that there has been some politics involved in a lot of the controversy, in terms of the law suits and things of that sort which I think hurt the Corporation and its clients. But my commitment is that politics should stay out of the Constitution.

Senator QUAYLE. Mr. Stubbs?

Mr. STUBBS. I am not aware of any politics, certainly in a partisan sense, insofar as the operation of the board is concerned. Certainly none has been exerted in my case and, so far as I know, with my colleagues here. I think if we are speaking of political activity or politics in a broader sense of using the political system, I feel from my own information that has been done, not at the board level but in the field. Whether or not that is within the proscriptions of the Congress is a matter which is an on-going consideration in the Congress. I think our board would be obliged—and I know we feel obliged—to carry out the mandate as it is expressed. To the extent that there is any restriction placed by the Congress on activities of grant agencies, we certainly should implement them and will implement them.

Senator QUAYLE. Mr. DeMoss?

Mr. DEMOSS. Senator, if confirmed, I would have no intention of seeking any instructions from any Member of Congress, nor from the executive branch, as to any decisions which I might make as a member of this board. While there may well be occasions on which information would be helpful to seek from those two branches, I do not see that anyone in either branch can advise me or tell me as to what my final decision should be as a member of this board.

In regard to politicization in the field, it is my impression, from the amount of study I have done to this point, that we face some structural problems of limitations on this board and what it can do to try to cure some of the problems of which you speak and of which Senator East spoke. But I will commit and pledge to you that within the power of this board, under the act and the regulations, I will seek to reduce in any way that I can these instances in which political activity, either overt or covert, or more particularly the case to which Senator East spoke of the solicitation of cases—which, as a lawyer, I find somewhat improper—I will do whatever I can to try to reduce and minimize those.

Finally, I would simply say that from my present knowledge, I think those instances of the cases which have generated high controversy and publicity and political aspects constitute a relatively small part of the total workload of the delivering agencies in the local areas. I would not want us to lose sight of the fact that the program is delivering good, solid, needed legal services to individuals, more than it is involved in any of these political activities.

Senator QUAYLE. Senator Eagleton?

Senator EAGLETON. Thank you, Mr. Chairman. It will be a cold day in hell when the professional bar renders adequate pro bono services. That is not only my opinion, that is the opinion of the bar. I think this pro bono fiction ought to be laid to rest. Senator East raised it.

I would like to put in the record at this point, Mr. Chairman, an article from the Arkansas Gazette of March 12, 1982, entitled "Lawyers Not Eager To Help Needy Get Free Services."

Senator QUAYLE. The article will be incorporated into the record.

[The article referred to follows:]

Arkansas Gazette (Ark.): 3-12-82

Lawyers Not Eager to Help Needy Get Free Services

Boca Raton, Fla.

A nervous Reagan administration, facing almost certain record-high budget deficits over the next three years, and a possible depression, has decided to drive the axe deeper into programs that serve the poor. The 1983 scheme is to take $2 billion from Medicaid, which provides health care for the indigent; jerk another $2.4 billion worth of food stamps from the impoverished, and slash another $2.2 billion from Aid to Families with Dependent Children (AFDC), the welfare program that offers only a feeble chance of a decent life to some 8 million children who live in the poorest families in the land.

Against these kinds of cuts, it may seem silly for me to write today about what the Reagan administration is doing to the Legal Services Corporation and to the hopes of poor people who want to believe that all Americans can have their day in court. But if you were a poor mother, and someone was trying to take away your baby, or you were a migrant worker in Florida who got suckered into virtual slavery, few things on earth would be more important to you than a lawyer to stand up for you in court.

Society's Commitment

In several ways, this society has made a general commitment to the idea that poor people deserve justice, too. The Florida Bar's Code of Professional Responsibility states that "the rendition of free legal services to those unable to pay reasonable fees continues to be the responsibility of each lawyer."

The Congress noted a few years ago that there were not enough volunteer lawyers to deliver justice to the poor, so it created the Legal Services Corporation and funded it with $321 million in fiscal 1981 so 6,200 staff attorneys could serve the poor.

But President Reagan is "out to get" Legal Services, because it offends his conservative philosophy to have a mere customer use a government-paid lawyer to sue a merchant, or a fruit picker get government help to sue a corporate farmer.

Mr. Reagan tried to wipe out the Legal Services Corporation this year, but Congress merely cut its budget by 25 per cent, leaving it with $241 million. Legal Services wants $265 million for fiscal 1983, but in his budget message Monday, the president recommended *zero* funding.

In its best days, Legal Services was helping only one of every five Americans eligible for assistance. The cut in the current budget will cause a loss of 2,000 lawyers and force a turnaway of thousands of more poor people who clamor desperately for what they see as justice.

Just in case Congress again will refuse to destroy the Legal Services Corporation completely, Mr. Reagan is naming a new, conservative board of directors who will harass, restrict and undermine Legal Services so that none of its lawyers can cause real trouble for the lords of entrenched greed.

Meanwhile, Mr. Reagan is telling Americans that "the volunteer spirit is alive and well in America."

If the president thinks that volunteer lawyers are going to rush to meet the needs of poor people, he ought to take a look at how Florida is responding.

This state's bar president, Sam Smith, asked a committee headed by Miami lawyer Neil Chonin to suggest ways in which the state's [illegible],000 lawyers might give *pro bono* (public service) representation to the needy. Fewer than 300 of the 6,000 Miami-area (Dade County) lawyers volunteered. So the Chonin committee came up with a "shocking" recommendation that every lawyer practicing in Florida either contribute 10 hours a year to serving needy clients or donate the equivalent of 10 hours of billable time ($1,500 for a lawyer who charges $150 an hour).

The "spirit of volunteerism" went sour real fast.

Some lawyers are arguing that the Florida Bar's Code of Conduct is wrong — that poor people have no more right to a free lawyer than they do to a free Cadillac.

Builders Not Called Upon

Other lawyers say that a poor Floridian's appendix can rupture, his teeth can fall out, his children can get frost bite sleeping on the ground, but nobody decrees that a builder must give a certain amount of free housing, a grocer any amount of free food or a doctor or dentist any amount of *pro bono* treatment.

One lawyer said to me: "Doctors and dentists get rich through Medicare and Medicaid. The Department of Housing and Urban Development takes care of builders and landlords. Grocers drool over food stamps. Only lawyers are expected to serve the poor for nothing."

Even before this "mini-rebellion," and before the budget cuts, Legal Services Corporation lawyers in Florida were rejecting seven of every eight eligible applicants. Those statistics will worsen, and the cold numbers will hide the magnitude of tragedy for many thousands of people.

We are a society groping anew to find a course that takes all Americans to a fair and decent form and level of life. A certain measure of our success or failure will be our response to the cries of the poor for courtroom justice.

Senator EAGLETON. I will read an excerpt of it and then ask a question of Mr. Earl, since he is from Florida. In this article, which has now been placed in the record, the following is written: "[The Florida] State's Bar President, Sam Smith"--Do you know Sam?

Mr. EARL. Yes, I do.

Senator EAGLETON [reading]. "Asked a committee headed by Miami lawyer Neil Chonin"—Do you know good old Neil?

Mr. EARL. Yes.

Senator EAGLETON [reading]. "To suggest ways in which the State's 29,000 lawyers might give pro bono (public service) representation to the needy. Fewer than 300 of the 6,400 Miami-area (Dade County) lawyers volunteered. So the Chonin committee came up with a 'shocking' recommendation that every lawyer practicing in Florida either contribute 10 hours a year to serving needy clients or donate the equivalent of 10 hours of billable time ($1,500 for a lawyer who charges $150 an hour).

"The 'spirit of voluntarism' went sour real fast.

"Some lawyers are arguing that the Florida Bar's Code of Conduct is wrong—that poor people have no more right to a free lawyer than they do to a free Cadillac."

What is your comment on that?

Mr. EARL. No. 1, Senator, I agree that pro bono programs will not, by themselves, serve the need. I think that is clear. I do not think anybody would refute that. Before the OEO days, that is all there was, and I do not think you will find anybody who says the need was met. I think the article—which I have read in another publication—that you just read somewhat places out of context what the Florida Bar is doing. I think Reese Smith, who was recently an ABA president, was one of the leaders in setting up Florida legal services. Chesterfield Smith, a few years back, was one of the primary supporters of legal services.

That particular proposal was controversial. Subsequent to that article, it went back to another committee of the bar, which killed it.

But I think there are other examples. We have an Orange County Bar, which for years has had a mandatory program: You either spend *x* hours or you pay $250 per year. They have a fully staffed legal services program based on that.

Probably, Senator, a better example of the bar coming to the fore is the situation in Miami, where as you know we have rather severe problems down there. In the Haitian immigration situation, where they are entitled to a hearing, the U.S. district judge and the bar leaders asked for volunteers. More than 300 Dade County lawyers signed up. I was one of those who signed up.

Senator EAGLETON. That is 300 out of 6,400. That is a voluntarism rate of less than 5 percent.

Mr. EARL. But for a program, Senator, that was not being handled at all.

Senator EAGLETON. Yes, that is better than nothing. Five percent is better than zero percent; we stipulate that into the record. But there is also the unanswered 95 percent. To the clarion call of the plight of the Haitians in Miami, 95 percent of the Dade County lawyers were deaf. You and 299 others volunteered, but 6,100 did not. Are you bragging about that? Do you think that is hallelujah day?

Mr. **Earl**. No, Senator. As I said, the pro bono program, by itself, is not going to do anything. To be fair, many of those same Dade County lawyers——

Senator **Eagleton**. Does every member of the panel agree with that statement by Mr. Earl, that the pro bono bromide, the pro bono fiction, in and of itself, will not work?

Mr. **Dana**. Senator, I would agree that we cannot go back to the pre-OEO days. But let me say that the Maine Bar Association has adopted a program following the Florida model. Over 500 of our 1,800 lawyers statewide have volunteered 15 hours per year. That is not much, but it is something. That is what we must do and what this board is committed to do: To substantially increase the role of private attorneys in fulfilling this need. It is not a myth. It has been a myth for the last few years. I do not think it will be a myth in the future. I think you will be prouder of our profession in the years to come.

Senator **Eagleton**. Mr. Chairman, I would like to put another article in the record on this subject matter from the Washington Post, May 27, 1981. The headline is, "Profession Ambivalent on 'Pro Bono' Work," by Fred Barbash.

Senator **Quayle**. The article will be inserted.

[The article referred to follows:]

[From the Washington Post, May 27, 1981]

PROFESSION AMBIVALENT ON "PRO BONO" WORK

(By Fred Barbash)

Among lawyers, there are at least two definitions of "pro bono" work. Some say it's work for which they asked no fee. They seek it, can afford it and it leaves them with a warm feeling in their stomachs.

Others say it's work for which they got no fee. They didn't seek it, may not be able to afford it and do it when they have to, when a client can't pay. It leaves them with a feeling in their stomachs that is not so much warm as empty.

Despite years of speechmaking from bar association leaders about pro bono work and responsibility to the poor, the ambivalence within the profession over actually providing such free services is very real. And with the Reagan administration eliminating, or, at best, curtailing federally funded legal services for the poor, this also presents a dilemma for the bar and raises questions about its ability to carry even a fraction of the load it may have to absorb.

Last year, for example, an American Bar Association panel revising the profession's code of ethics announced with a flourish a proposal to require pro bono work as part of the ethical responsibility of every lawyer. After howls of protest, Robert Kutak, the Omaha lawyer who heads the panel, said in an interview that the proposal has been totally eliminated in the draft code about to be released.

Last December, the D.C. Bar, to which all practicing lawyers in Washington must belong, voted in a referendum to prohibit the use of membership dues to fund such activities as lawyer referral services for the poor. Some lawyers said they objected not to the idea of providing pro bono lawyers for the poor, but rather to being forced to contribute to anything. However, Zona Hostetler, director of the D.C. Bar office operating the pro bono program, sees the vote as demonstrating a lack of commitment to the poor. The D.C. Court of Appeals upheld the referendum and Hostetler is now in the process of dismantling the service.

And interviews with bar officials from around the country indicate that most areas, especially localities outside metropolitan areas, have no systematic mechanism for finding lawyers for people who cannot afford them in civil cases—the kind of cases now handled by the thousand by the federally funded legal service offices around the country.

The American Bar Association has given out $103,000 in grants this year to six bar associations to begin setting up such mechanisms, with staff to answer the phone, find the right lawyers and follow up on the handling of the cases.

"But most places have no organized pro bono program," said Ruth Ann Schmitt, who runs the ABA pro bono project.

Part of the dichotomy reflects the extremes of the profession, the contrast between small firms and large firms. Hogan and Hartson, one of Washington's most prestigious and largest firms (153 lawyers), operates a Community Services Department along with its tax department, administrative department and other more conventional commercial sections.

Two prominent lawyers, Sara-Ann Determan and David Tatel, formerly head of Health, Education and Welfare's Office for Civil Rights, farm out to the firm's lawyers individual cases—divorces, landlord-tenant disputes, and so on—and important class actions in the fields of civil rights, civil liberties and economic justice.

Lawyers from the firm recently filed a friend of the court brief, for example, in a major case at the Supreme Court involving the rights of the mentally retarded. Hogan and Hartson attorneys have represented the Black Panthers, have challenged Internal Revenue Service tax exemptions for segregated private academies and have defended government whistle-blower Ernest Fitzgerald.

Determan said that at any time, the firm is involved in about 50 pro bono cases and consumes annually about $1 million in "billable" time working for nothing.

All that is unusual, even for Washington firms. For smaller firms such consistent pro bono activities are unheard of. And outside the big cities, more than 70 percent of the nation's private practice lawyers are either sole practitioners or members of firms with two to 10 lawyers.

Lawyers in smaller firms around the country say that for them, pro bono work is often an accident. "It happens when we take on a case and later find out the person can't pay all or part of the bill," said Portland lawyer Martin Howard, who heads an ABA committee on the economic problems of small firms. Howard is now in a five-lawyer firm but most of his life he has been on his own.

"When you're on your own," he said, "pro bono means when they can't pay."

Lawyers in these firms say they simply can't afford to do more. Some also say that danger lurks in taking on the sorts of social causes legal services lawyers or Hogan and Hartson can manage, even if they were philosophically disposed to do so, which many are not.

A small firm may be vulnerable to pressures from clients who might object to a lawyer's involvement in a social cause. "It's like newspapers," said Michael Hagland, a private practice lawyer in charge of a new ABA-funded volunteer lawyers project in Portland. "The smaller the newspaper and the smaller the community, the more vulnerable it is to pressure from advertisers or loss of advertisers."

Corporate clients often need firms like Hogan and Hartson more than the firm needs them, Hagland said.

Some lawyers in regular contact with law schools see little prospect of an increasing interest in pro bono work. "There seems to be a falloff in the interest," said Determan, basing her comment on interviews with law students. "Eight years ago, virtually every student asked about the opportunity for pro bono work at a firm. But now they're more security oriented."

Senator EAGLETON. I will read you an excerpt from this article. Now that we have you, Mr. Dana, I will give this to you. Are you active in the ABA?

Mr. DANA. I am a member, sir.

Senator EAGLETON. A member. Well, we are all members. I do not do much bragging about it.

Do we have any ABA activists here? Anyone who is active in the ABA? You know, go on the picnic, to the annual party, and all that junk? No activists here? Not one ABA activist? Well, we will still use you then, Mr. Dana.

Here is what this article says: "Last year, for example, an American Bar Association panel revising the profession's code of ethics announced with a flourish a proposal to require pro bono work as part of the ethical responsibility of every lawyer. After howls of protest, Robert Kutak, the Omaha lawyer who heads the panel, said in an interview that the proposal has been totally eliminated in the draft code about to be released." Are you familiar with any of that?

Mr. DANA. Somewhat, Senator.

Senator EAGLETON. You are not proud of that, are you?

Mr. DANA. I am not.

Senator EAGLETON. And the ABA, the record will show, is the national organization, theoretically speaking, for the entire American legal profession. Is that not correct?

You mentioned these previous presidents of the American Bar, Chesterfield Smith and these other fellows. They like to pontificate as spokesmen for the profession, do they not, Mr. Earl?

Mr. EARL. I do not know that you can call what they are doing "pontificating." I think that Justice Powell——

Senator EAGLETON. They like to give speeches saying that they are president of the American Bar, an association of *x* thousand lawyers in the 50 States.

Mr. EARL. Senator, I think if we go back to the formation of the Legal Services Corporation and the OEO also, we will find that the American Bar was in the forefront of that, the leadership of the American Bar. Justice Powell was instrumental in these programs. I think it is unfair to——

Senator EAGLETON. The presidents of the ABA consistently have been advocates of the Legal Services Corporation before it was created and have been advocates of its continuation since it came into law. I think, without exception.

Mr. EARL. I presume the president speaks for the association, sir.

Senator EAGLETON. That is right. But there is a gap between the pronouncements of the president and his good intentions and his good motives and the response from the membership, in terms of voluntarism, pro bono work, and so on. It ended up at the meeting in "howls of protest." This man Kutak of Omaha got all excited.

Let us get to the concept of politicization. Do any members of the panel before us know F. William McAlpin? Do you know him, Mr. Olson?

Mr. OLSON. Yes, sir.

Senator EAGLETON. Do any of the others?

Mr. EARL. Oh, yes. I know who he is.

Senator EAGLETON. You all know who he is, I take it.

Are you the only one who knows him in person?

Mr. OLSON. I am probably the only one who has met with him concerning Legal Services, Senator.

Senator EAGLETON. Do any of you know of him by reputation?

Mr. DEMOSS. Certainly.

Senator EAGLETON. Would all of you agree that his reputation is impeccable?

For those of you who know of him, would you say that his personal reputation as a professional lawyer is impeccable?

Mr. OLSON. Senator, he is currently serving as secretary of the American Bar Association, in addition to being a former chairman of this board.

Senator EAGLETON. Do you know what his personal politics are?

Mr. Olson. Yes. He is a Republican.

Senator EAGLETON. He was chairman of the last Legal Services Corporation before you guys came on board?

Mr. **Olson**. Yes, sir. Senator Eagleton. Now, he is an activist in the American Bar, a partner in one of the most prestigious law firms in the country, a noteworthy and participating Republican, a man of great prestige and esteem.

Senator **Eagleton**. Do you think he politicized the Legal Services board during his chairmanship of it?

Mr. **Olson**. Sir, I think earlier when we were talking about politicization, we were responding—I was, at least, from my perspective—to Senator Quayle's question concerning the politicization of the program at the local level, which is basically a shorthand way of saying that attorneys in the program would be pursuing their own personal political agenda, rather than pursuing the needs of clients who come in the door, one by one, taking and meeting their needs. When we talked about the politicization of the board, I had not—and I do not think anyone else had—an example of a prior board having been politicized.

Senator **Eagleton**. My time is up, but I will come back again.

Senator **Quayle**. Thank you. Senator Pell?

Senator **Pell**. Thank you very much, Mr. Chairman.

I would like to ask a question to all of you. Were any of you, in discussing your possible appointment with the administration, asked whether you would support a recommendation by the President to eliminate the corporation?

Mr. **Dana**. No, I was not.

Mr. **Paras**. No.

Senator **Pell**. None of you was asked that question. Were you asked to make any other commitments to the administration about positions you would take as a board member?

Mr. **Olson**. No, sir.

Mr. **DeMoss**. No, sir.

Senator **Pell**. The President has recommended that the Legal Services Corporation be abolished, as you know. Do you all agree with the President's recommendation?

Mr. **Paras**. I do not.

Mr. **Dana**. I do not.

Mr. **Stubbs**. I do not.

Senator **Eagleton**. Let us see how many do agree with the President's recommendations? Raise your hands.

[No response.]

How many disagree with the President's recommendation?

[A showing of hands.]

Senator **Pell**. The record should note that all hands went up.

Senator **Eagleton**. All hands were raised.

Mr. **McKee**. Senator, may I make a comment. It is ironic that not in the history of the program has there been such a controversy. Senator Eagleton's points about the American Bar Association as one of the greatest proponents of the program are very well taken. I sometimes think that the ABA is a great advocate of the program so that bar associations will not have to do so much in this regard. But there is one thing that the administration did through its budget recommendation—forgetting its merits: it has gotten everyone into a discussion of what the alternatives are, if any, to Federal financing of legal services for the poor. Whether it is pro bono, which I think probably would not work, or whether it is some other system, but for the President's recommendation and the resulting controversy, this entire area would remain out of the headlines.

The present discussion and controversy has made people focus on "who is going to serve the poor people of the United States with legal services?" While I do not necessarily agree with every aspect of what the President recommended in the budget request since we have a program where people have to be served, his recommendation has gotten everyone to focus on the issue of the future of legal services to poor people. If it was not for his recommendation I am sure that this hearing room would not be as full as it is today.

Senator **Pell**. Mr. DeMoss, what do you think would be a reasonable budget request for the corporation in fiscal 1983?

Mr. **DeMoss**. Senator, I do not know that I can give you a precise figure. We are getting into the question of the financial needs of the corporation, and I just am not prepared at this time. I think I can tell you that from my personal viewpoint, I do not think the funding of the corporation should be reduced any further from what it is right now, which as I understand it is on a continuing resolution at the level of $241 million.

Senator **Pell**. Thank you very much.

Now I would like to address a question, if I could, to Mr. Earl. My understanding is that the members of the Legal Services Corporation board have a good deal of indirect control over the daily operations of the senior staff by virtue of hiring policy. With the administration's wish and intent to abolish the corporation, you may be urged to support candidates who have either no record of active support for legal services or record of actual opposition. Since you will be involved with this quite a lot, what will be your criteria in hiring senior staff?

Mr. **Earl**. As I understand the process, the board selects the president, Senator, and the president then selects the other officers and his employees. I think the only direct control would be the selection of the president. I think that is going to be a critical decision. It sends out a lot of messages, No. 1; and, No. 2, it is going to take a unique individual to be able to deal with field programs, with a new environment at the corporation, and to be able to come before Congress.

I think we are going to need somebody with experience in legal services, somebody who can relate to the program, someone who can relate to Congress, someone who can deal with this new board. We have sent out notices for applicants, basically using the mailings and advertisements that were used last time when Mr. Bradley's job was solicited. Mr. Dana is the chairman of the presidential search committee, and he will be able to give you more details about that.

Mr. **Dana**. You did a fine job. We are in the process right now of seeking a new president. We have 150 applicants and encourage additional applicants. We would like as large a pool as possible, and we are seeking the best possible candidates.

Senator **Pell**. Thank you very much, Mr. Chairman.

Senator **Quayle**. Thank you very much, Senator Pell.

In my question to the panel before on the possible politicization of the board, I was asking and tried to extract whether they thought there would be any political influence put upon them as board members. There was a follow-up question on whether in fact there was any politicizing of the past board or past decisions, and basically the answer came back with no allegations that there had been.

My question was to extract a commitment from these individuals to this committee that there would be no politics played by them as individual board members in the decisions that they would be making.

Second, I would like to comment on this so-called pro bono issue. I agree with Senator Eagleton, the issue of pro bono work as such is not going to resolve the problem. But I also would think and would hope that the ABA and others in the legal community would take the idea of pro bono work much more seriously than they do. As a matter of fact, I would think that perhaps one of the reasons that the legal profession is held in such low respect today is because of their lack of commitment to volunteerism, their lack of commitment to pro bono work.

I certainly do not think that anyone would suggest, and I at least would take sharp disagreement with any suggestion, that pro bono work is the whole answer to this. However, it is a sad day for the ABA and the legal profession to have to admit that they cannot get people in their profession to take a little bit of time out to help some of the people that need their services. It seems that the legal community is just more interested in making money, perhaps, than in having a more equitable and just judicial system than we have. I believe this is certainly an argument that many can wage with a great deal of credibility and justification and that this is something that members of the bar ought to consider.

I do not think that, standing by itself, pro bono work is a complete solution, but I certainly do think that the idea of pro bono, of volunteerism, of having a little bit more benevolence and carefree humanitarian spirit in our legal profession certainly can be discussed. It can be discussed from many sides, on how to enhance the profession, and on how to get a better legal system than we have.

Gentlemen, I do not have any further questions. I thank you for your responses. I wish you all well. It is a very important endeavor that you are undertaking, and the President has placed his confidence in you. I would, as a point of personal privilege, like to comment on one absentee member of the board, Mr. William Harvey, who comes from Indianapolis, Ind.

I had the great pleasure of being a student of his at the Indiana University School of Law at Indianapolis. He is a man of impeccable credentials, both in the legal profession, as an individual, and as a family man. I am sorry that he is unable to be here because of other longstanding commitments, but I do want the record to note that he is an outstanding individual. I understand he will be before the committee next month. He has my strong support. You will find that he has a very diversified background, and when he is here he will be a very articulate spokesman for himself.

Senator Eagleton?

Senator **Eagleton**. Thank you, Mr. Chairman. I subscribe to your observations on pro bono and the fact that the leaders of the American bar vigorously espouse it and, I think, sincerely so. They have not been able to generate the followers for their lead. The

American bar, Members of Congress, and used car salesmen are held in equivalent esteem. I, unfortunately, am a member of two out of three of those categories.

The American medical profession talk about volunteerism, but they just talk about it. They do not do a great deal about it either.

On this question of politics, I have one more question on that. I take it that all of you adhered to the precept that the Legal Services Corporation is an independent, autonomous entity. Correct?

Mr. OLSON. That is correct.

Senator EAGLETON. It is subservient to no other outside command or dictate? Is there any quibble with that?

[No response.]

Senator EAGLETON. Mr. Dana, when the new board met for the first time, did you present a resolution which sought to freeze the funding of the board at that first meeting?

Mr. DANA. I presented a resolution. Its purpose was to give a board that had just been appointed an opportunity to look at the grants. I guess I heard about my appointment at 9:30 at night on December 30, and we had a meeting that next afternoon in Washington. I presented a resolution which had as its function to freeze something that did not exist. We believed that grants had not been issued for the forthcoming year—incorrectly, as it turns out—and we wanted an opportunity to look at the grant applications and review the process. We quickly discovered that this was an error and that in fact the grants had been awarded. We are proceeding on those grants, and will, until they expire.

Senator EAGLETON. You were notified at 9:30 p.m. on the evening of December 30 of your appointment?

Mr. DANA. That is correct, Senator.

Senator EAGLETON. Who notified you, Mr. Dana?

Mr. DANA. I think it was—I am sure it was a Mr. Moorhead.

Senator EAGLETON. Moorhead? Who is he?

Mr. DANA. He is in the White House personnel office.

Senator EAGLETON. White House personnel. Was this a total thing out of the blue, the first time you had ever heard of the fact that you were under consideration for this?

Mr. DANA. No, Senator. Prior to that time, I had submitted reams and reams of forms, FBI forms. I knew it was coming.

Senator EAGLETON. You knew it was coming, but you did not know when?

Mr. DANA. Correct.

Senator EAGLETON. And Mr. Moorhead notified you at 9:30 p.m., December 30; correct?

Mr. DANA. Correct.

Senator EAGLETON. You said there was a meeting that next day. Was that a meeting of the physical bodies present or was that a meeting over the telephone?

Mr. DANA. There were some of us in Washington and some of us at our homes or places of business around the country.

Senator EAGLETON. Where were you?

Mr. DANA. In Washington.

Senator EAGLETON. Who was present with you, physically in the room, in Washington?

Mr. DANA. Mr. Olson, Mr. Satterfield——

Senator EAGLETON. Who is he, so that we have it for the record?

Mr. DANA. He is a recess appointee.

Senator EAGLETON. Go ahead.

Mr. DANA. There was one Steve Engleberg of the board present.

Senator EAGLETON. Engleberg? He is on the board?

Mr. DANA. He was at that time.

Senator EAGLETON. He is a holdover?

Mr. DANA. Yes. I think there were just four of us present in Washington, and there were six others present by telephone hookup.

Senator EAGLETON. In the room in Washington, were there any other people present who were not on the board?

Mr. DANA. Yes.

Senator EAGLETON. Who were they?

Mr. DANA. I am not sure of the man's name. There was at least one reporter there——

Senator EAGLETON. To take down the meeting?

Mr. DANA. No. I think it was the Los Angeles Times.

Senator EAGLETON. A newspaper reporter?

Mr. DANA. It was Don Ivers, who is a reporter for the Los Angeles Times.

Senator EAGLETON. The LA Times was there. Were there any other nonboard members present?

Mr. DANA. Yes. There were two or three other gentlemen there, I believe. Maybe you can help me.

Mr. OLSON. There was a gentleman by the name of, I believe, Jerry O'Leary, if I am not mistaken, who had been active in the general practice section of the ABA.

Senator EAGLETON. O'Leary had no Government connection?

Mr. OLSON. No, sir.

Senator EAGLETON. He is a lawyer and active in the ABA?

Mr. OLSON. Yes.

Senator EAGLETON. Anybody else?

Mr. OLSON. There was a court reporter who transcribed the entire proceedings and taped it as well.

Senator EAGLETON. OK.

Mr. OLSON. There was a gentleman by the name of Marshall Boarman, who is now with the Community Services Administration, I believe.

Senator EAGLETON. CSA has gone out of business, has it not?

Mr. OLSON. Yes. A former employee of the Community Services Administration.

Senator EAGLETON. Well, if he formerly had been with them, what was he with when he was in the room there on New Year's Eve?

Mr. OLSON. I believe he was on his own time at that time.

Senator EAGLETON. Who was he representing by being there in the room?

Mr. OLSON. He was there because he had helped me on the day before to get the meeting together.

Senator EAGLETON. Would it be fair to say that he has reasonably good connections with the White House?

Mr. OLSON. I think you would have to ask the White House that question. I cannot answer.

Senator EAGLETON. Would it be safe to say he knows Mr. James and Mr. Moorhead, the personnel guys over there?

Mr. OLSON. I do not believe he has ever met Mr. James. I know I introduced him to Mr. Moorhead.

Senator EAGLETON. Why were they there? I am just curious. We have the LA Times reporter; this fellow Boarman, recently of CSA; a lawyer, theoretically unconnected with anything, named O'Leary. What were they doing in the room?

Mr. OLSON. As I said, Senator, the day before, when we received this word that these appointments would be made, I had been appointed as acting chairman by the President for purposes of calling a meeting, since the former chairman, Mr. McAlpin, had been replaced during this appointment process. In an effort to make phone calls and set the meeting up, I called upon Marshall Boarman to help me during that period. You have to understand, we were there at a period at night. We were trying to make a great number of phone calls to get people lined up to come down to Washington or, alternatively, to be available by conference call the following afternoon. I had him help me, and Mrs. O'Leary is a friend of his.

Senator EAGLETON. Mr. Dana, this motion or proposal to freeze the grants, which you later found was ill-timed or belated because the grants had been awarded, was that motion your idea?

Mr. DANA. No, you would not say it was my idea.

Senator EAGLETON. You were then a member of the board, which had served a total of less than 12 hours. Where did you get the idea to make that proposal, as a 12-hour member of the board?

Mr. DANA. The very next person I talked to, after I talked to Mr. Moorhead the night before, was Mr. Olson, who was there at the time. We discussed the situation, which was we mistakenly believed that if we did not act before the first day we would have to wait a year before we could look at this program. I participated in the drafting of that resolution—inartfully drafted as it was—when I got to Washington that morning.

Mr. OLSON. Senator, would it be useful for me to elaborate on that?

Senator EAGLETON. Well, let me finish with this line.

Mr. Olson. I am sorry. Go ahead.

Senator EAGLETON. Did Mr. Moorehead, in this 9:30 p.m. phone call, mention anything along this line at all with respect to freezing the awarding of grants or anything like that?

Mr. DANA. No. I know Mr. Moorehead. I have known him for a long time.

Senator EAGLETON. Had anyone earlier, while your papers were being processed by the FBI and all that business, suggested this course of action?

Mr. DANA. No, Senator. Mr. Moorhead said, "The President has just appointed you, Howard, and he has asked Bill Olson to serve as interim chairman because Mr. Olson was taking the place of Mr. McAlpin."

Senator EAGLETON. The idea, I gather, really came from Olson to you?

Mr. DANA. I discussed it with him.

Senator EAGLETON. Where did you get the idea, Mr. Olson?

Mr. **Olson**. Your Honor—I am sorry; I have had too much work in the courtroom.

Senator **Quayle**. You can call him "Your Honor." That sounds pretty good.

Senator **Eagleton**. We are all frustrated judges.

Mr. **Olson**. The concept of implementing that freeze was behind my desire to get the administration to make those appointments which they had been making to do, getting the paperwork processed, the FBI checks and such, done. I was eager that they proceed in order for us to be able to do that.

Can I just take a second to explain what the resolution did? It was in the New York Times the very next day, in an erroneous story as to what the report did, and the wrong word went out to the field. I would like to just correct it quickly.

Senator **Eagleton**. Go ahead.

Mr. **Olson**. The resolution, first of all, asked for a freeze on all grant awards for 1982 and contract awards for 1982, pending further action of the board, which we believed would come at a late January board meeting. We were anticipating a late January board meeting.

Second, we ordered the study by the board of the grants and contracts review procedures. We were brand new to this. We had to get our feet wet somehow. We wanted to learn as much as we could and act responsibly.

Third, we put in a paragraph which is a very important aspect of that resolution, to insure continued funding for every single recipient, both grantee and contractor, during this period of review at the level of last year's grant to that recipient organization, reduced by the amount that the Congress had reduced the total appropriation. In other words, every single grantee and contractor could receive and draw down from his resources, his unexpended balances, an amount equal to that; and if he did not have sufficient unexpended balances, we would give him the money. So that really was a three-part resolution.

Senator **Eagleton**. This idea of this freeze of grants, that originated solely with you? It was basically your idea? No one else suggested it to you whatsoever?

Mr. **Olson**. I believe it was my idea. It actually came during a conversation I had over in the office of Pen James, concerning whether indeed it was essential that those appointments be made.

Senator **Eagleton**. You did discuss it with Pen James?

Mr. **Olson**. Oh, yes. I recommended that this go forth, because I thought that freeze had to be implemented in order for the new board to effectively carry out its responsibilities.

Senator **Eagleton**. So it at least had some nexus to the White House itself, did it not, if you discussed it with Mr. James?

Mr. **Olson**. It had that nexus, yes, sir.

Senator **Eagleton**. When and if you become confirmed as members of this board, what will be your nexus with the White House henceforth?

Mr. **Olson**. You have to recall, of course, that during that period, first of all we were trying to get oriented. It was a fairly disorienting procedure to get appointed, to begin with, and then to be selected as acting chairman for that interim period. We tried to do the best we could to put a fair resolution forth. Howard flew down the next day, Congressman Satterfield was in town, and we brainstormed the meeting ahead of time and then came up and put this resolution through. I think it was a wise response.

Now, in terms of looking prospectively, I do not believe that the administration, either the executive branch or the legislative branch in all candor, has the right to dictate any action that we take, nor do I believe they dictated that action. That was my idea. It turned out to be not a particularly good idea, Senator, because as a matter of fact we were wrong about the premise on which the resolution was based. But I do not think that is proper in the future.

Senator EAGLETON. Shall I continue?

Senator QUAYLE. Let me propose a question to you. I have had some inquiries from other panelists. They have run into some time conflicts. About how much time will you need?

Senator EAGLETON. I am going to need about 15 more minutes.

Senator QUAYLE. Are there other minority members who will be returning to ask any questions?

All right. For those who have requested it, there will be a delay until 10 minutes 'till 1 before the other panel will be called. We will continue at that time, and I will call eight witnesses at that time so that they may testify.

Senator Eagleton?

Senator EAGLETON. I would ask this question of the entire panel. In your private legal careers, has any of you ever filed a class action suit on behalf of any client, or has the firm with which you were associated filed such a suit? Maybe you did not, but a partner did.

Mr. OLSON. I have never personally participated in a class action. I was with a larger District of Columbia law firm for a while, and I am sure they did.

Senator EAGLETON. The larger firm probably did, but you did not?

Mr. OLSON. I have no recollection.

Senator EAGLETON. Mr. Earl?

Mr. EARL. Senator, I have participated in class action litigation four or five times defending class actions. I also have had the pleasure of putting together the first class action bibliography which was published, I guess, about 4 or 5 years ago now.

Senator EAGLETON. You have participated representing defendants, but have you ever participated representing plaintiffs in a class action?

Mr. EARL. Not as of yet, Senator.

Mr. PARAS. Senator, I am sure I did, but it would be prior to 1970. I have a recollection of having participated on both sides in class action suits, but I could not give you any more than that. Nothing since I resumed law practice.

Senator EAGLETON. Mr. Dana?

Mr. DANA. Yes, sir: both sides.

Senator EAGLETON. You have participated on behalf of plaintiffs in filing and litigating class action suits?

Mr. DANA. And defendants.

Senator EAGLETON. And defending them.

Mr. McKee?

Mr. **McKee**. No, I have not. To the best of my knowledge, the firm I am with has not either, because it is a communications firm.

Senator **Eagleton**. Mr. Stubbs?

Mr. **Stubbs**. Senator, through the attorney general's office, I have not personally participated in the litigation. Litigation has been filed by the attorney general in the nature of a class action, and we have also been respondents in that action.

Senator **Eagleton**. Mr. DeMoss?

Mr. **DeMoss**. No, both personally, and as far as I know, none of our firm has handled a class action for a plaintiff.

Senator **Eagleton**. Mr. Stubbs, how long have you been with the attorney general?

Mr. **Stubbs**. Slightly more than 9 years, Senator.

Senator **Eagleton**. I used to be an attorney general in Missouri. Do you know how the attorney general for the State proceeds to assemble his class when he decides to embark upon a class action suit?

Mr. **Stubbs**. I know of the ones which we have initiated, yes, sir.

Senator **Eagleton**. You are from Georgia, are you?

Mr. **Stubbs**. Yes, sir.

Senator **Eagleton**. How does the attorney general of Georgia assemble the class?

Mr. **Stubbs**. We only have had, to my recollection, two of them in that period of time. Both of them were in the nature of antitrust actions. One of them had to do with the counties and municipalities that bought sugar. The other was the counties and municipalities that bought school buses.

Senator **Eagleton**. Did not the attorney general of Georgia go out and encourage school districts or other purchasing entities of school buses to join with him in the class action suit?

Mr. **Stubbs**. No, he did not.

Senator **Eagleton**. He did not?

Mr. **Stubbs**. They asked us to be included in the class action. As a matter of fact, in the school bus case, we went forward with them in the class with some reservations as to whether or not we could properly represent them, and the Federal judge threw the class out; he refused to certify the class. In the sugar case, we had similar requests from the municipalities and counties who largely bought through the State purchasing office, and through them they asked to be included in the action. We were thrown out of court on an Illinois Brick type of situation, which held that we could not maintain the action, except to the extent that the State itself had bought sugar.

Senator **Eagleton**. Well, I can state for the record that during my era as attorney general, it was commonplace—and we used to meet twice a year as attorneys general—for an attorney general (a) to bring a class action suit, and (b) to go out and recruit participants in the class. If it is a school bus case, alleging antitrust conspiracy, and overcharges in the purchases of school buses, we would go out and solicit school districts who bought a sizable number of buses to join us in the class action suit. Indeed, every other attorney general that I knew of around that time proceeded somewhat that way.

Mr. Dana, when you brought class action suits representing the plaintiffs, were you not willing to have other people join you in that class action suit, and did you not at least give some encouragement that some others would join you in bringing a class action suit?

Mr. **Dana**. Senator, I am trying to think of suits that I have personally been involved it at the commencement. I was recently involved in a class action case, but I became involved in the class action matter when it was on appeal to the Supreme Court, so I was not involved at the outset. I am aware that in that situation, the issue was really whether or not the State was treating social security plaintiffs correctly, and the plaintiff originally was a sufficient class representative in and of himself, and other people did not have to be brought in. That is one of the advantages of a class action; you can look after people who you do not have to name as plaintiffs because they are incorporated by reference.

Senator **Eagleton**. Would it not be fair to say that it is rather commonplace throughout the legal profession that in the formulation of a class action suit, the lead attorney, who is carrying the heavy burden in prosecuting the case, encourages other individuals to join with him in that endeavor?

Mr. **Dana**. I am not sure. I would doubt that.

Senator **Eagleton**. I am pretty sure.

Mr. **Dana**. I think there is a major ethical problem in that. I have not looked into it myself. I do not think that an attorney should go out and beat the bushes looking for clients. You can represent a class if the clients who come to you are reasonably representative. You can commence the law suit on behalf of people who are not your clients. You do not have to physically go out and knock on doors and chase ambulances. That is one of the advantages of a class action suit.

Senator **Eagleton**. Let me go at it this way. In terms of redressing a grievance, and that is in essence what legal services is all about, the redressing of grievances, is it not fully appropriate in some circumstances that, rather than proceed on an individual case basis, Mr. Jones versus somebody, that in order to genuinely redress the grievance, that a class action suit may well lie in many circumstances? Is that not the case?

Mr. **Dana**. Yes, sir.

Senator **Eagleton**. Does any member of the panel disagree with that vague precept? [No response.]

That is, class action litigation, in terms of vindicating rights of either handicapped people, poor people, or whatever, is an essential tool that, under proper circumstances, must and should be utilized. Do you agree with that, Mr. Dana?

Mr. **Dana**. It is a tool. It is certainly, under our law, appropriate. I would not say that it was essential. It is, in some cases, far more expedient to bring one law suit rather than a whole lot of them. But in terms of establishing principles of law that continue from this day forward, one plaintiff is good enough. If you are endeavoring to remedy a wrong on behalf of many people similarly situated——

Senator **Eagleton**. Well, an individual litigant can bring it. *Brown* v. *Board of Education* was brought by Brown, but that did not just vindicate student Brown's right to go to a nonsegregated school. That vindicated the rights of all youngsters who had been discriminated against.

Mr. DANA. That was my point. I was just quibbling with your word "essential." I agree with you.

Senator EAGLETON. In an analogous field, equal employment opportunity under Ms. Eleanor Holmes Norton, policy was one—and I think rather properly so—rather than trying to vindicate the right of one aggrieved employee, she instituted many class action suits to vindicate the rights of all similarly situated employees who had been discriminated against in certain factual contexts; is that not correct?

Mr. DANA. I am not familiar with the specific cases.

Senator EAGLETON. I think class action suits are vital, when you are talking about redressing wrongs and grievances. I do not mean that is the sole mechanism by which one proceeds in this area. But I think to put it on the back burner or to put it on the shelf would mean that individual litigants will be able to vindicate their particular grievances. But we cannot always go at this on a one-on-one basis. Under certain facts and circumstances, it is perfectly proper and indeed could even be imperative to proceed on a class action basis. So you will not foreclose, as a member of the board, the regional offices or your litigation division from proceeding on a class action basis, would you?

Mr. DANA. I do not think we could under the statute.

Senator EAGLETON. The committee report that accompanied the Senate bill when the Legal Services Corporation was set up in law said, as follows—and the report, though not statutory in form, is given great weight by the courts in terms of explaining what Congress had in mind when it passed a particular statute. Here is what the Senate report said, in part. These were the criteria that were to be considered when considering nominees to the board:

> (1) Board membership which is adequately adequately representative of the organized bar, legal education, legal services attorneys, the client community, and organizations involved in the development of legal assistance for the poor;
>
> (2) The selection of persons who are committed to the corporations freedom from political control; and
>
> (3) The assurance that board members understand and are fully committed to the role of legal assistance attorneys and support the underlying principle of this legislation, that it is in the national interest that the poor have full access under the law to comprehensive and effective legal services.

Do any of you have any quarrel, from a philosophical point of view, with that language as contained in the Senate committee report? [No response.]

All right. Now back to sub 1: a board membership that is adequately representative of the organized bar, legal education, legal services attorneys, the client community, and organizations involved in the development of legal assistance for the poor.

Mr. Olson, in what category do you fall?

Mr. OLSON. Clearly a member of the bar in two States.

Senator EAGLETON. You are from the organized bar group; you are not legal education, you never were a legal services attorney, you are not from the client community, and you are not from an organization involved in the development of legal assistance for the poor?

Mr. OLSON. The question would arise, of course, as to whether in order to be a legal services attorney you had to be on the payroll of an organization that was funded by the corporation or whatever.

Senator EAGLETON. It says "legal services attorney." You never were one, were you?

Mr. OLSON. I have never been in the employ of one.

Senator EAGLETON. You are an organized bar type.

What about you, Mr. Earl? Where do you fall?

Mr. EARL. Of course, I am an organized bar representative. I think my views also reflect legal service programs. I have spent the last 2 months talking and visiting programs. I think basically my views reflect those of most of the legal services people I have met.

Senator EAGLETON. You are primarily organized bar?

Mr. EARL. Yes.

Senator EAGLETON. What about you, Mr. Paras?

Mr. PARAS. I fall into two categories, Senator. I am a representative of the organized bar, and I am also an attorney providing legal assistance to eligible clients.

Senator EAGLETON. So you are a double-header?

Mr. PARAS. Yes.

Senator EAGLETON. What about you, Mr. Dana?

Mr. DANA. I am in the organized bar. I am an attorney who provides legal service, whether or not I qualify under the statute.

Senator EAGLETON. Yes, you have had some experience in that, the record should show.

Mr. DANA. That is correct.

Senator EAGLETON. What about you, Mr. McKee?

Mr. MCKEE. I am a member of the organized bar. In terms of legal education, I have for a number of years around the country taught bar exam writing techniques, so I would consider that important in that area.

Senator EAGLETON. So you are primarily organized bar, but you have done some lecturing.

Mr. MCKEE. It is kind of a side hobby, as a matter of fact. The third aspect is, I used to work in a legal services office here in Washington, D.C.

Senator EAGLETON. OK. That is good.

Mr. Stubbs?

Mr. STUBBS. I am a member of the bar. I have taught for 11 years in a law school, as a full-time professor. Up until the present academic year, I have been an adjunct professor of law.

Senator EAGLETON. Very good.

Mr. STUBBS. Finally, under the law in our State— we have an integrated bar—the attorney general is a member of the board of governors. We are working with the president of the State bar in some fashion to ameliorate the problems that you mentioned earlier about volunteerism. I do not know where I fit in.

Senator EAGLETON. You certainly fit in as organized bar, legal education, and in another category at least somewhat tangentially.

Mr. DeMoss, what about you?

Mr. DEMOSS. Organized bar.

Senator EAGLETON. Professor Harvey, who is not here, would be from the legal education category; is that right?

Senator **QUAYLE**. He also has some experience with legal services in Indiana.

Mr. **EARL**. Senator, may I supplement my answer, please?

Senator **EAGLETON**. Yes.

Mr. **EARL**. I am an attorney. I do not qualify clients, in terms of the eligibility test, but I have provided over the last several years substantial legal assistance to people I think would qualify as eligible clients. I think I do represent that category also.

Senator **EAGLETON**. It says "the client community" in the committee report, meaning one who is himself or herself a potential client or in a class of potential clients.

Mr. **DEMOSS**. Senator, may I supplement my answer, too?

Senator **EAGLETON**. Yes.

Mr. **DEMOSS**. I am presently a member of Houston Pro Bono Services, which intends at least to provide civil representation. I do not know whether their standards for qualification are the same as the Legal Services.

Senator **EAGLETON**. The point I am making, Mr. Chairman, is that we have a panel of seven individuals, some with more broadly-gauged experience than others. But it is fair to say that the organized bar is going to be extraordinarily well represented on this board in numbers, and the client community will certainly not be represented among the seven here present. On the query about organizations involved in legal assistance, some have done a little pro bono work or have had some connection with a bar that did.

I have no objection to the organized bar being represented on the board. I do have some objection that they become the totality of the board. That is the point I am trying to make.

Mr. **OLSON**. Senator, may I also supplement my answer, because the second time through it becomes more clear. I have also provided free pro bono legal services to individual clients, and indeed at the moment I provide pro bono legal services—and have for a long time—with Davis Memorial Goodwill Industries, which serves emotionally, mentally, and physically handicapped persons in the District of Columbia, almost all of which are eligible clients, and I work on the board with Victims Assistance Legal Organization, which does provide legal assistance to persons who otherwise cannot afford it in some respects and otherwise with the victims movement.

Senator **EAGLETON**. Thank you, Mr. Olson. I will not belabor the hearing, but I have handed to you some general questions pertaining to the Legal Services Corporation, its responsibilities, its role, and the scope of its activity.

I ask unanimous consent that my list of general questions be printed in the record as though read.

Senator **QUAYLE**. They will be, Senator.

Senator **EAGLETON**. And I ask, Mr. Chairman, that each of these nominees respond to these questions in writing and that their written answers be made a part of the hearing record.

Senator **QUAYLE**. The Chair will so instruct the nominees.

Senator **EAGLETON**. Finally, and in conclusion, Mr. Chairman, I will say this. Mr. Paras, I have read your letter.

By the way, the inference that somehow the recipient of it, Judge Reynoso, leaked it is not correct; you were advertising it all over the world. You sent your letter to the California Judicial Qualifications Commission. You have a wide array of cc's. Anytime you "cc" somebody, you are not trying to keep it too hush-hush. You were "cc-ing" everybody in town. You have the letter. You should not be ashamed of——

Mr. **Paras**. Pardon me, sir. What are the 'cc's" of which you speak? It went to Judge Reynoso, as I recall. Of course, it went to the judicial performance commission, which was concerned——

Senator **Eagleton**. You wrote it to Rose Elizabeth Bird, Lester E. Roth, George Deukmejian, Judicial Qualifications Commission of California. You were not writing this on behalf of the CIA on a national security matter.

Mr. **Paras**. No, sir.

Senator **Eagleton**. You are a rather loquacious man, are you not? Would you not describe yourself as loquacious?

Mr. **Paras**. I will not dignify that with an answer, sir.

Senator **Eagleton**. All right. I ask unanimous consent that Mr. Paras' letter be put in the record, in full, and that his cover letter, when he circulated it around, dated January 11, 1982, be put in the record as well.

Senator **Quayle**. So ordered.

[The material referred to follows:]

LAW OFFICES OF
GREVE, CLIFFORD, DIEPENBROCK & PARAS
SUITE 725, 455 CAPITOL MALL
SACRAMENTO, CALIFORNIA 95814-4498

GERALD R. JOHNSON ([illegible])

CLAIRE H. GREVE
EDWARD T. CLIFFORD
ANTHONY C. DIEPENBROCK
GEORGE E. PARAS
GERARD A. ROSE
VICTOR F. STEFAN
LAWRENCE A. WENGEL
GORDON W. COOK
WILLIAM C. BARRY
THOMAS J. KNOX
GARY SCOTT DECKER
TERRY A. APPLING
ELISA R. ZITANO

TELEPHONE
443-2011
AREA CODE 916

January 11, 1982

The Honorable Rose Elizabeth Bird
The Honorable Lester E. Roth
The Honorable George Deukmejian
Judicial Qualifications Commission
State of California

Re: Cruz Reynoso

Dear Commission Members:

For whatever value it may have to you in determining whether to confirm the nomination of Justice Reynoso to the California Supreme Court, I herewith register my firm opposition thereto. The opposition is based on five and one-half years of daily experience with him as a colleague on the Third District Court of Appeal, during which we worked together on hundreds and hundreds of cases.

Justice Reynoso is not good for California as a Justice of its Supreme Court. My specific reasons for so concluding have been stated in a highly personal letter I wrote to him at the time of my recent departure from that same Court; having been written spontaneously, it expresses my thoughts far better than I could state them to you as of this date. I have deleted from that lengthy letter only a small portion at the bottom of page three and top of page four, for arbitrary reasons; should Judge Reynoso choose to make that further disclosure, that is his affair.

There is only one more subject which I care to address. The Legal Affairs Secretary told me recently that someone who has done an analysis of Judge Reynoso's decisions on the Third District Court of Appeal, as of March 1981, listed six criminal cases in which he dissented from a reversal of the

The Honorable Rose Elizabeth Bird
The Honorable Lester E. Roth
The Honorable George Deukmejian
January 11, 1982
Page Two

conviction. I find this statement unbelievable and suggest that it is inaccurate. I would like very much to know each of the cases by name and number so that I might verify such a claim. To my recollection Judge Reynoso never dissented from a reversal of a criminal conviction. He certainly did not in any case in which I participated, and I know of none involving any of my former colleagues. If that had happened, I have no doubt that the word would have reached me since I read every case that came out of that Court whether I participated in it or not. I should very much like to know specifically these cases, so that if I am wrong I can apologize appropriately.

Respectfully yours,

GEORGE E. PARAS

bjm
enclosure
cc: Justice Cruz Reynoso

Court of Appeal
Third Appellate District
State Library and Courts Building
Sacramento, California 95814

George T. Paras
Associate Justice

August 3, 1981

The Honorable Cruz Reynoso
Associate Justice
Third District Court of Appeal
Sacramento, California 95814

My Dear Cruz:

Along with letters to my other colleagues, I felt it appropriate to write this farewell note to you. Were it not for the fact that you recently asked me to express any ideas I might have, I would have written you a short and pleasant few words. But since you asked in effect for constructive criticism, I shall give it, and I know there is no way in the world you will fail to think that it is intended to offend you personally. It is not. I am simply recapping events of the past and using them to suggest your improvement in the future.

By the way, no one in the Court knows anything of this letter, not even Pat. I am having it done at my law office.

Cruz, you have all the qualifications essential to a fine appellate court justice. Your chief problem, from the very beginning, was that you did not come aboard with the intention of rendering traditional judicial service to the public. Instead you arrived with some ill-conceived notion that you, in alliance with the Brown philosophy, should institute reforms, that you should oppose that which the rest of us had been doing for so many years before, and that you should promote the interests of the so-called "poor" and "minorities," to their advantage and to the consequent disadvantage of all others. You were not prepared to look upon and treat all litigants alike. You measured the outcome of a case as often as you could, not by its abstract merit, but by the relative economic standing of the parties. He who had not always prevailed in your thinking against him who had.

Accordingly you never cast a vote against a welfare claimant, no matter how idiotic the claim. You constantly worried that employers, police, or district attorneys would "get away" with something. You never voted to deny relief to a person who had failed to follow the claim procedures of the Tort Claims Act. You were always "bothered" by the fact that some criminal received the punishment he deserved. You distrusted trial judges, refusing to accord them a presumption of valid rulings. Your judicial philosophy was expressed literally and rather clearly in this fashion: the role of the judge is to protect the defendant (in a criminal case) and the poor (in a civil case); the People and the non-poor are strong enough to take care of themselves. This attitude is ridiculous. Where do the People find justice, regardless of their strength, when the judge rules against them because he must favor the defendant? Where do corporations find justice when the ruling is against them simply because they are not "poor"? Your attitude treats justice as synomous with victory for the have nots, a nice socialistic philosophy first proclaimed by Karl Marx many years ago and now still espoused by those who euphemistically call it a "redistribution of wealth."

You and I never got along primarily because of this Robin Hood theory. It came to a head in the deRonde case in which you took a wholly indefensable position, in which our Supreme Court indefensably in turn supported you. The gibberish you uttered in the course of making all but Blacks, Mexicans, Indians, etc. second class citizens is an insult to your own intelligence. You undoubtedly have forgotten this by now, because it suits your ethnic allegiance to forget it, but we had a very long and serious discussion about minority preferences just after the first Backe case authored by Mosk, which you recall was six to one in its holding that any minority preference contravenes the equal protection clause. We discussed it in the context of minority musicians trying out for the San Francisco Symphony who first insisted that they audition with a screen separating them from the judge; then when they saw that this bit of impartiality resulted in the selection of too few of them, they demanded a visual audience. You then voiced the view that the blind auditions were naturally more just and correct. You voiced full agreement with the Mosk opinion. You stated unequivocally that you did not feel "minorities" had any right to preference, but only to equality, meantime agreeing with me that we should do everything possible to recruit, educate, train, promote and otherwise strive to give them full opportunity to achieve equality. In fact, I enclose herewith a photocopy of a little note you sent me just after that conversation; it illustrates the view you expressed.

What happened to your convictions between that conversation (1977) and 1980 when we authored deRonde? The Federal Backe decision happened, and that's all you needed. You repudiated your prior expressions, and I am convinced not because you truly saw things differently but only because you would not now abandon your constituents, the MAPA group for example, who were so elated by Justice Powell's idiotic distinction between minority status as a "quota" and minority status as a "factor." Your dissent in our deRonde decision is pure trash, just like the majority opinion authored by Richardson in the Supreme Court. You have taken us back to Plessey v. Ferguson, and you expect us to like it. Can you accept a literal regression back to the Plessey doctrine? Of course you can't (even though your people never were included in that ignominy). Then how do you expect me to accept it?

Your problem is that you feel it your obligation to be a professional Mexican rather than a lawyer. Thus you must remain true to the ideals consistently tossed about by the leaders of the so-called Mexican movement. You must ever champion the "oppressed," meaning those who so designate themselves, such as criminals, handicapped, welfare recipients, demonstrators, "minorities," and miscellaneous other have nots.

It is this dedication not to justice and law but to the poor and oppressed that has prevented you from realizing your potential as an effective judge. In virtually everything I saw you do, this was your motivation.

You continued this inclination in your expression of preference when we hired the first staff attorney after your arrival. We interviewed seven people, one of whom was of Mexican descent. He had the worst grades, the least writing ability, the most inappropriate background, and the fewest overall qualifications. You voted him number one. Why? Can you truly believe that he would have been an asset to the Court under the circumstances?

You bottlenecked all of us and our work until the ninety day rule was adopted and came to our rescue. Our cases were stacked in your office for months on end, as long as a full year, for reasons I only partly understand. You insisted upon participation to the utmost in every aspect of the Court's activity, but were never prepared to make the necessary sacrifice in time and effort to make it work as the rest of us did. When you saw me help the Court's congestion by taking a dozen "turkeys" and deciding them (correctly) off the briefs in short opinions (without the necessity of going through staff attorneys) you wanted some of that action; you got it, with six cases, most of which have stayed undecided in your office since last December. You wanted to participate in settlement conferences, something which made me proud of you at the time, yet you were not willing to organize your efforts so as to even keep abreast of the cases or to respond to the attorneys' needs. When you could not even process routinely a Notice of Termination of Settlement Conference so as to promptly start the briefing time running, a simple matter of marking the face sheet "not settled" and sending it to my office, you certainly did no service to the Court or to the public. I leave the Court today with thirty-three settlement conferences handled by you in 1980 still unresolved and still in a state of utter confusion, even though I have been trying assiduously for the past six months to work with you to at least find out how and where they stand.

To put it very succinctly and very bluntly Cruz, you have been a pain in the ass! You came aboard believing that you were entitled to a specific minority preference as a judge of the Court, because you are who you are. You have wanted special favors, special considerations, special concessions that none of the rest of us have wanted or needed. All we ever sought was to do the work of the Court and get it all out as expeditiously and competently as possible. You wanted and apparently still want to share in everything, but to slow the entire Court down to your pace and your degree of inferior productivity. Even when I correctly decided the loyalty oath case as a "turkey," you felt that it should have gotten more "complete" treatment, i.e., that it should have consumed ten times the effort for the same product.

I hope you will change. You showed some signs of it in your treatment of the Medical Malpractice Reform Act. You showed nothing but the same old blind adherence to your conceived duty to minorities when you joined the Supreme pack recently in reversing a death penalty decision. My fond hope is that you are truly as political as I think you are, and that once you achieve stardom by elevation to the Supreme Court, your genuine talents and instincts for true and even-handed justice will come to the fore.

For years I have been bewildered by the fact that you and I should have seen virtually everything eye to eye, coming from almost the identical backgrounds. We both come from immigrant parents, both at the time of the depression, both very poor, both long treated by the "Nordics" of our society as something less than normal. Yet we have agreed upon virtually nothing. I think I have now reached the right conclusion as to why this is so. My major premise was wrong. I don't believe you were ever genuinely poor. You were the son of an immigrant alright, but you never knew true poverty or need; nor were you personally ever oppressed. I also don't believe that you ever felt the real sting of discrimination. Had you suffered these experiences, we would have had to think alike.

I can only wish you well in the future, hoping that you will choose just to be a good lawyer and a good American; the rest will then take care of itself.

Sincerely,

GEORGE E. PARAS

GEP:sd

enclosure

GEORGE –
ONE INSTANCE OF
THE TYPE OF AFFIRMATIVE
ACTION I APPROVE.
CRUZ

Teacher Cites Need for More Indian Lawyers

DENVER (UPI)—The growing complexity of Indian affairs has greatly increased the need for American Indian lawyers, according to an Indian legal educator.

Sam Deloria, director of the American Indian Law Center in Albuquerque, N.M., said the number of American Indian lawyers has increased 20-fold during the past decade, but the demand for them is nowhere near being satisfied.

Deloria said there are now 400 Indian lawyers, compared to 20 in 1967. He said the nation's estimated one million Indians will soon need about 2,000 Indian lawyers to handle their affairs. He said none of the nation's 175 Indian law students should have difficulty finding work.

Deloria, 36, was in Denver recently to address the three-day National Convention of the American Indian Law Students Association being conducted at the Cosmopolitan Hotel and the University of Denver Law Center.

The law group, which is affiliated with the University of New Mexico, is a research organization that administers scholarship funds for 180 Indian law students throughout the nation.

Deloria said the growing complexity of Indian affairs partially explains the increased demand for Indian lawyers.

Several tribes, such as the Crow and Northern Cheyenne in Montana and the Navajo in Arizona, New Mexico and Utah, own huge deposits of mineable natural resources, particularly coal.

Many tribes in the late 1960s leased or sold mineral rights to giant coal companies at prices far below current market value. Deloria said experienced Indian lawyers, knowledgeable in energy law, will have to renegotiate those leases.

Deloria also said a large number of Indian lawyers probably will be involved in litigation trying to force the federal government to provide more services to Indians.

The federal government has more than 1,000 programs of one sort or another. Indians are active participants in less than 200 of them, he said.

"We've got to open up access to the federal services," said Deloria.

Many tribes now employ Anglo lawyers or law firms to handle their legal affairs, said Deloria. He said many Indian lawyers still are inexperienced and some tribes believe Anglos with political connections can represent them better than Indian lawyers.

Senator **Eagleton**. I have read the letter, Mr. Paras. The letter, in my mind, does nothing to exonerate the method in which you think. I think your quotation about "professional Dagos" and what not has caught you as you truly are. Your letter, the vitriolic nature of it, the accusatory nature of it, the incendiary nature of it, and then your followup quotation about "professional blacks, professional Jews, professional Dagos" captures you to a "T".

I consider your nomination to this commission to be a disgrace. I think you are a disgrace to the bar. You are a disgrace to the bench. You are a disgrace to the legal profession. You are a disgrace to President for having sent your name up. You are, for the lack of a better term, a 14-carat bigot. I think the country would be better served if you retired to your justified oblivion. Thank you.

Mr. **Paras**. Mr. Chairman, initially, at the outset, you asked if any of us had any comment. Of course, none responded. In view of——

Senator **Quayle**. I really do not want to belabor it. If you want to respond in 30 seconds, you can, or you can submit some kind of a written response. If you want to make a short response, it is certainly proper, but I do not want to continue this dialog.

Mr. **Paras**. I have obviously taken no joy in it. But if I may, I would like simply to say, particularly since further testimony is going to be coming, and it is all going to be coming against me, at least to the extent that it comes against me, it would be directed to this matter of the letter I wrote involving Justice Reynoso. May I say that the efforts to discredit me, insofar as my views in the *DeRonde* decision or the *Bakke* decision have totally failed. I would ask, if I have your permission to submit a copy of the opinion which I authored in the court of appeals in the *DeRonde* case.

Senator **Quayle**. That will be submitted in the record, if that is your desire.

[The material referred to follows:]

[Civ. No. 16732. Third Dist. Jan. 21, 1980.]

[As modified Feb. 20, 1980.]

GLEN DERONDE, Plaintiff and Appellant, v.
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA et al.,
Defendants and Appellants.

SUMMARY

In an action by a rejected applicant for admission to a University of California law school, challenging the university's use of ethnic status to mitigate lower predicted first year law school grade averages of applicants, thereby giving minority applicants a preference, the trial court entered judgment permanently enjoining the use in the admissions process of any criteria involving race, color, ethnic origin, or ethnic minority status as factors mitigating lower predicted averages. The court denied plaintiff any individual relief and also denied his motion to amend his complaint to include a cause of action for money damages allegedly suffered because of his intervening enrollment in a private law school. (Superior Court of Yolo County, No. 32781, James G. Changaris, Judge.*)

The Court of Appeal affirmed, holding that, though the preference program did not violate the equal protection clause of U.S. Const., 14th Amend. in that it did not employ quotas, it gave a special privilege to Native Americans, Blacks, Filipinos, Asians, and Chicanos, that it denied to all Americans of other ethnic groups in violation of the provision of Cal. Const., art. I, § 7, subd. (b), that "[a] citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens." Rejecting plaintiff's contention that the trial court abused its discretion in denying him leave to amend to allege money damages, the court held that the evidence showed that plaintiff would not have been admitted to the law school even in the absence of the

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*Assigned by the Chairperson of the Judicial Council.

challenged minority special admissions procedure and thus could not have suffered any damages as a proximate result thereof. Declining to treat the case as moot because of plaintiff's graduation from another law school, the court held that the question presented was one of great public importance, certain to recur, and that deliberately prolonged indecision on the subject was unthinkable. In the conclusion, the court held that the record contained no finding of any past discrimination that could form the basis of an exception to the constitutional provision. (Opinion by Paras, J., with Puglia, P. J., concurring. Separate dissenting opinion by Reynoso, J.)

HEADNOTES

Classified to California Digest of Official Reports, 3d Series

(1) **Constitutional Law § 74—Equal Protection—Standing of Person Claiming Denial.**—In a proceeding by a rejected law school applicant seeking a writ of mandate to compel the University of California to admit him, the trial court did not abuse its discretion in denying plaintiff's motion for leave to amend his complaint to allege damages suffered because of his intervening enrollment in a private law school, where the action was based on plaintiff's allegation that he was rejected solely because he was a white male, in violation of his right to equal protection of the law, and where the evidence showed that plaintiff would not have been admitted even in the absence of challenged minority special admissions procedures; thus he could not have suffered any damage as a proximate result thereof.

(2) **Constitutional Law § 83—Equal Protection—Classification—Judicial Review—Mootness.**—It was not appropriate to treat as moot an appeal from a judgment enjoining the University of California from using ethnic minority status as a law school admission factor, even though plaintiff, a white male, had meantime graduated from another law school. The legality of preferential treatment in professional school admissions programs is a question of great public importance, certain to recur. In view of the devastating effect on the disfavored of governmentally sanctioned favoritism, especially in the pursuit of education, deliberately prolonged indecision on the subject is unthinkable.

(3a, 3b) **Constitutional Law § 100—Equal Protection—Classification—Bases—Race—Validity of Minority Preference Program for Admission to Public Law School.**—In an action against the University of California challenging the use of a minority preference program in law school admissions, the trial court properly entered judgment enjoining the use in the admissions process of any criteria involving race, color, ethnic origin, or ethnic minority status as factors mitigating lower predicted first year performance averages of applicants. Though the program did not violate the equal protection clause of U.S. Const., 14th Amend., in that it did not employ quotas, it gave a special privilege to Native Americans, Blacks, Filipinos, Asians, and Chicanos, that it denied to all Americans of all other ethnic groups in violation of the provision of Cal. Const., art. I, § 7, subd. (b), that "[a] citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens." The record contained no finding of any past discrimination by the law school that could form the basis of an exception the constitutional provision.

(4) **Constitutional Law § 76—Equal Protection—Nature and Scope—Under State Constitution.**—Though the right to an education is not expressly guaranteed by the California Constitution, it is nonetheless a fundamental interest as to which, in applying state constitutional provisions guaranteeing equal protection of the laws, the courts will apply strict and searching judicial scrutiny; it is among those individual rights and liberties which lie at the core of our free and representative form of government.

COUNSEL

Glen DeRonde, in pro. per., and John A. DeRonde, Jr., for Plaintiff and Appellant.

Donald L. Reidhaar, John F. Lundberg, Gary Morrison and Lawrence B. Garcia for Defendants and Appellants.

OPINION

PARAS, J.—Plaintiff DeRonde was one of approximately 2,200 applicants for admission to the first year class of the University of California at Davis Law School in 1975. His application was denied and he was so notified in February 1975 by Ronell L. Gordon, Dean of Admissions.

In July 1975, DeRonde filed suit against the Regents of the University of California and Dean Gordon (hereinafter collectively the University), seeking a writ of mandamus, an injunction, and declaratory relief to compel his admission to the school. He alleged he was rejected solely because he was a white male, in violation of rights guaranteed by the California and United States Constitutions and the federal Civil Rights Act (42 U.S.C. § 2000d). The trial court issued an alternative writ of mandamus, and a hearing was held on August 19, 1975. Documentary evidence and oral testimony were presented, and both sides rested. DeRonde then moved to amend his complaint to include a cause of action for money damages suffered because of his intervening enrollment in a private law school. The court directed the filing of briefs and instructed DeRonde to file a written motion to amend and proposed amendment, to be considered and ruled upon after briefing and submission.

On February 5, 1976, after the briefs were filed, the trial court issued a "memorandum of intended decision" in which it concluded that DeRonde would not have been admitted to the law school even in the absence of the disputed admissions program; thus he suffered no resultant damage and was entitled to no relief. Noting also that DeRonde had failed to submit a written motion and amendment and had moved orally to amend after the evidentiary hearing so that the University had had no opportunity to present evidence in opposition, the court found the delay in moving to amend unwarranted and denied the motion on that ground. The court further held however that the admissions procedures violated the equal protection and due process clauses of the Fourteenth Amendment of the United States Constitution and the equal protection and privileges and immunities clauses of the California Constitution (art. I, § 7), because ethnic status was used to mitigate low predicted first year law school grade averages (PFYA) of applicants, thereby giving "minority" applicants a preference. Finally, after determining that DeRonde had standing to enjoin such practices "so that should he reapply to the law school his application can be considered without discrimination because of ethnic origin," the court ruled that a preliminary injunction should issue.

On March 1, 1976, the parties stipulated that the memorandum of intended decision be treated as an announcement of intended final decision and the order to be entered after findings of fact and conclusions of law constitute a final judgment. Final judgment consistent with the court's intended decision was entered on December 6, 1976. Inter alia, the judgment permanently enjoined the use in the admissions process of any criteria involving race, color, ethnic origin, or ethnic minority status as factors mitigating lower PFYA's.[1] The University appeals that portion of the judgment finding the admissions procedures unconstitutional and enjoining the use of ethnic minority status as an admissions factor, while DeRonde appeals the denial of his motion to amend and the failure to grant him individual relief.

I

(1) We first consider the contentions of DeRonde. He concedes reversal of the denial of his writ petition would be futile since he has now graduated from another law school. He urges reversal, however, because he contends the trial court's denial of his motion for leave to amend to plead damages was an abuse of discretion. We find no abuse. The evidence shows and the trial court fairly concluded that DeRonde would not have been admitted even in the absence of the minority special admissions procedures; thus he could not have suffered any damage as a proximate result thereof.

As noted, over 2,200 persons applied for the entering class of 1975. Four hundred nineteen were offered admission. The selection procedures begin with a statistically weighted formula reflecting a combination of previous academic grades in college and scores on the standardized law school admissions test (LSAT). This formula yields for each applicant a PFYA, the prediction of his or her first year average academic grades. Those with the highest PFYA are then offered admission, but subject to certain other considerations. Recognizing that the accuracy with which the PFYA formula predicts first year performance for an individual can be affected by various other background factors, the University uses one or more of a number of factors to mitigate (i.e., prevent the automatic rejection of an individual with) a relatively low PFYA. These are (1) growth and maturity, and commitment to law study (shown by employment, extracurricular and community activities, advanced degrees or studies, and personal statements and recommendations), (2) factors no longer present which previously affected grades (such as temporary physical handicaps and changes in school or environment), (3) wide discrepancies between grades and test scores where there is additional evidence of ability and motivation, (4) ethnic minority status,[2] and (5) economic disadvantage. Similarly, a higher PFYA is subjected to downward adjustment by consideration of such factors as (1) prior schools attended, (2) rigor of previous courses of study, (3) multiple LSAT scores varying more than 70 points, (4) absence of factors showing growth, maturity or motivation, and (5) age over the low forties.

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[1] The court's order reads: "1. Plaintiff's application for writ of mandate compelling his admission to Defendants' School of Law is denied and the alternate writ of mandate is discharged:

"2. Plaintiff's motion for leave to amend the complaint to include a cause of action for damages is denied;

"3. Plaintiff's prayer for damages is denied;

"4. Defendants' Law School admissions procedures violate the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution and the Equal Protection and Privileges and Immunities Clause of the California Constitution;

"5. Defendants' Law School admissions procedures are discriminatory as a matter of law;

"6. Defendants are permanently enjoined from utilizing any admissions criteria based upon color, race or ethnic origin;

"7. Defendants are permanently enjoined from utilizing ethnic minority status as a factor mitigating a lower predicted first year average in their admission program; and

"8. Plaintiff to have judgment for his costs of suit taxed in the sum of $788.45."

In 1975, using the above criteria, Dean Gordon recommended 118 "possible admits" and 1,022 "possible denials" to an admissions committee composed of himself, three faculty members, and two students. The committee accepted the dean's recommendation as to 106 admissions and 993 denials. DeRonde's highest PFYA (he took the LSAT twice) was 2.70 and he was rejected at this point in the selection process. The PFYA numbers for the total of 419 applicants offered admission in 1975 ranged from 2.24 to 3.43.

A comparison of DeRonde's PFYA and that of the 419 successful applicants shows that 71 of the latter had a lower PFYA than he. All but two of these were minority applicants. However, there were 808 rejected applicants, including 35 minority applicants, with a higher PFYA. Thus even if, as contended by DeRonde, the trial court erroneously assigned the burden of proof to him to show he would have been admitted in the absence of minority status consideration (*Bakke* v. *Regents of University of California* (1976) 18 Cal.3d 34, 63-64 [132 Cal.Rptr. 680, 553 P.2d 1152]), the conclusion that he would not have been admitted in any case is inescapable. DeRonde's appeal must fail for lack of causation.

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[2] The University's admissions program defines minorities as "Native American, Black, Filippino, Asian, and Chicano."

II

(2) The University urges us to treat the case as moot because of DeRonde's law school graduation (see *DeFunis* v. *Odegaard* (1974) 416 U.S. 312 [40 L.Ed.2d 164, 94 S.Ct. 1704]), and to direct the trial court to vacate its injunction as superfluous to DeRonde's rejected plea for personal relief, then dismiss the action. We decline to do so. (See 6 Witkin, Cal. Procedure (2d ed. 1971) Appeal, § 470, pp. 4426-4428.) The legality of preferential treatment in professional school admissions programs is, as the University concedes, a question of great public importance, certain to recur. Given the devastating effect upon the disfavored of governmentally sanctioned favoritism (cf. *Brown* v. *Board of Education* (1954) 347 U.S. 483, 494-495 [98 L.Ed. 873, 880-881, 74 S.Ct. 686, 38 A.L.R.2d 1180]), especially in the pursuit of education (*id.*, at p. 493 [98 L.Ed. at p. 880]), deliberately prolonged indecision on the subject is unthinkable. Refusal to pass on the validity of minority preference[3] programs in such circumstances would be an act of judicial irresponsibility.

As stated by Justice Brennan in dissent in *DeFunis* v. *Odegaard, supra*, "Moreover, in endeavoring to dispose of this case as moot, the Court clearly disserves the public interest. The constitutional issues which are avoided today concern vast numbers of people, organizations, and colleges and universities, as evidenced by the filing of twenty-six *amicus curiae* briefs. Few constitutional questions in recent history have stirred as much debate, and they will not disappear. They must inevitably return to the federal courts and ultimately again to this Court. Cf. *Richardson* v. *Wright*, 405 U.S. 208, 212 [31 L.Ed.2d 151, 92 S.Ct. 788] (1972) (dissenting opinion). Because avoidance of repetitious litigation serves the public interest, that inevitability counsels against mootness determinations, as here, not compelled by the record. Cf. *United States* v. *W. T. Grant Co.*, *supra*, at 632 [97 L.Ed. 1303];

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[3] We consciously do not employ the term "affirmative action" in characterizing the University's admissions process. By now that term should be thoroughly discredited (see *Dawn* v. *State Personnel Board* (1979) 91 Cal.App.3d 588, 593-595 [154 Cal.Rptr. 186]); it has so many potential meanings as to be meaningless in intelligent discourse. Rather we prefer the more accurate term "minority preference," recognizing nonetheless the insoluable and inherently arbitrary question of who is and who is not a minority. (See Renfrew, *Affirmative Action: A Plea for a Rectification Principle* (1977) 9 Sw.U.L.Rev. 597.)

Parker v. *Ellis*, 362 U.S. 574, 594 [4 L.Ed.2d 963, 80 S.Ct. 909] (1960) (dissenting opinion). Although the Court should, of course, avoid unnecessary decisions of constitutional questions, we should not transform principles of avoidance of constitutional decisions into devices for sidestepping resolution of difficult cases. Cf. *Cohens* v. *Virginia*, 6 Wheat. 264, 404-405 [5 L.Ed. 257] (1821) (Marshall, C. J.)." (416 U.S. at p. 350 [40 L.Ed.2d at p. 188].)

III

We are mindful of our role as an intermediate appellate court regarding a legal question so sensitive, controversial, and crucial to the democratic ethic. It will doubtless be decided by higher judicial authority, and properly so. All we can do is note and briefly discuss and attempt to interpret the few Supreme Court cases on the subject, analyze and express our own opinion thereon, and render our decision in the expectation that it will be found persuasive. Our duty is thus discharged.

A

The long awaited opinion of the United States Supreme Court in *University of California Regents* v. *Bakke* (1978) 438 U.S. 265 [57 L.Ed.2d 750, 98 S.Ct. 2733], proved weak and inconclusive. Instead of collectively and forthrightly addressing the simple Fourteenth Amendment phrase "nor shall any State . . . deny to any person . . . the equal protection of the laws," the Supreme Court justices intellectualized themselves into decisional obscurity. Nonetheless, by a numerical count of their various expressions we conclude that a five to four majority disapproves ethnic minority "quotas" but sanctions their substantial equivalent, the use of ethnicity as "*a* factor but not *the* factor" in the admissions criteria. (See Dixon, *Bakke: A Constitutional Analysis* (1979) 67 Cal.L.Rev. 69.)

(3a) Since here the University's admissions program does not use quotas, it does not violate the Fourteenth Amendment's equal protection clause as viewed by the federal *Bakke* majority. That does not however end our inquiry, for the California Constitution must also be consulted to determine whether the trial court's decision can and should be supported on independent state grounds (cf. *Serrano* v. *Priest* (1976) 18 Cal.3d 728, 760-768 [135 Cal.Rptr. 345, 557 P.2d 929]). As earlier noted the trial judge rested his decision on the Fourteenth Amendment, and also on California Constitution, article I, section 7, which provides: "(a) A person may not be deprived of life, liberty, or property, without due process of law or denied equal protection of the laws. [¶] (b) A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens. Privileges or immunities granted by the Legislature may be altered or revoked."

Most recently in *People* v. *Pettingill* (1978) 21 Cal.3d 231, 248 [145 Cal.Rptr. 861, 578 P.2d 108], our Supreme Court summarized the independent state grounds doctrine as follows: "The standard to be applied in resolving this issue is also now settled: 'in the area of fundamental civil liberties—*which includes* not only freedom from unlawful search and seizure but *all protections of the California Declaration of Rights*—we sit as a court of last resort, subject only to the qualification that our interpretations may not restrict the guarantees accorded the national citizenry under the federal charter. In such constitutional adjudication, our first referent is California law and the full panoply of rights Californians have come to expect as their due. Accordingly, decisions of the United States Supreme Court defining fundamental civil rights are persuasive authority to be afforded respectful consideration, but are to be followed by California courts only when they provide no less individual protection than is guaranteed by California law.' (*Longwill*, at p. 951, fn. 4, of 14 Cal.3d [123 Cal.Rptr. 297, 538 P.2d 753]; accord, *Serrano*, at p. 764 of 18 Cal.3d; *Hannon*, at p. 606 of 19 Cal.3d [138 Cal.Rptr. 885, 564 P.2d 1203].)" (Italics added.)

Section 7 of article I, is of course included in California's declaration of rights. (4) And even though the right to an education, the subject of our inquiry, is not *expressly* guaranteed by our constitution, it is nonetheless "a fundamental interest" (*Serrano* v. *Priest, supra*, 18 Cal.3d at p. 766), as to which "[i]n applying our state constitutional provisions guaranteeing equal protection of the laws we shall continue to apply strict and searching judicial scrutiny. . ." (*id.*, at p. 767); it is among "those individual rights and liberties which lie at the core of our free and representative form of government" (*id.*, at pp. 767-768).

(3b) In the application of the strict scrutiny standard we need look no further than the analysis of Justice Mosk in *Bakke* v. *Regents of University of California, supra*, 18 Cal.3d 34 (henceforth state *Bakke*), in which no aspect of the subject of minority preference in education was left unexplored. With utmost candor and thoroughness, every reasonable argument that could be put forth in support of the practice was confronted and decisively discredited in that opinion. The issue therein was framed as "whether a racial classification which is intended to assist minorities, but which also has the effect of depriving those who are not so classified of benefits they would enjoy but for their race, violates the constitutional rights of the majority." (*Id.*, at p. 48.) The absence of specific quotas in the Davis Law School admissions program does not alter the ensuing analysis of the decision or lessen its effect, for it is undeniable that the preference accorded minority applicants denies admission to nonminorities solely because of their race. The state *Bakke* analysis and conclusion, though expressed in terms of the federal standard (18 Cal.3d at p. 63), meticulously addresses all the considerations pertinent both to the phrase "A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens" of article I, section 7, subdivision (b), and to the equal protection clause of section 7, subdivision (a). By necessary implication therefore, the state *Bakke* holding rests upon independent state grounds, was not abrogated by the federal *Bakke* decision, and stands as precedent forbidding the minority preference practiced by the University.[4]

In opposing this conclusion the University asserts (in oral argument) that whenever our Supreme Court has chosen to apply more protective standards, it "has always protected groups such as criminal defendants, children in poor school districts who have been the subject of improper action or entitled to special protection because of their relatively defenseless state," not "advantaged nonminorities." In answer to this assertion we note first that the latter phrase presupposes both that all members of "minorities" are disadvantaged and that all members of "nonminorities" are advantaged, hypotheses fallacious, illogical and unrealistic. More to the point however, we see no constitutional difference between a 10-year-old child seeking equal protection in the pursuit of elementary schooling and a 21-year-old youth who seeks the same protection in the quest for a professional degree. The latter is as much victimized as the former by rejection due to ethnic origin. And it goes without saying that the aspiring law student is as much entitled to the greater protection of our state Constitution as the demonstrated murderer of *People* v. *Disbrow* (1976) 16 Cal.3d 101 [127 Cal.Rptr. 360, 545 P.2d 272].

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[4] We here take note of *Minnick v. Department of Corrections* (1979) 95 Cal.App.3d 506 [157 Cal.Rptr. 260], in which hiring preferences given by the Department of Corrections to women and minority groups designated as "'Black,' 'Asian,' 'Spanish surname,' 'Native American,' and 'other extraction'" were approved. While a feeble effort at a distinction might be made because of a trial court finding there that racial and sexual diversity were essential to a safe and efficient correctional system due to the racial and ethnic diversity of the prison population, there is no denying the inconsistent conclusions there and here. We simply disagree with the *Minnick* court's shallow analysis of independent state grounds (95 Cal.App.3d at pp. 522-523), and its timid approach to the chosen people syndrome vis-à-vis equal protection.

The University's admissions program gives to Native Americans, Blacks, Filipinos, Asians, and Chicanos, a special privilege it denies to Americans who are ethnically Swedes, Cubans, French, Portuguese, Poles, Czechs, Russians (European type), Spaniards, Puerto Ricans, Albanians, etc., etc. California's declaration of rights states in article I, section 7, subdivision (b), that "A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to *all* citizens." (Italics added.) Nothing can be more clear than that the University is in violation of this provision of the California Constitution.

B

We offer our own analytical support to the wisdom of the state *Bakke* decision.

The concept of preferential treatment for "minorities" springs from the fact that certain racial and ethnic groups are numerically underrepresented in some fields of endeavor, particularly the professions. Attributing this reality to past discriminations which deprived them of the opportunity to compete on an equal basis, these groups have sought and obtained assurances, both judicial and legislative, that equality of opportunity shall not now be denied them. But the mere achievement of ensured equal opportunity does not magically produce instant proportionality. Only time, patience, and dogged exploitation of the fundamental birthright will bring about that result. Not content however to await these events, some who championed the now achieved equality of opportunity[5] have overshot the goal and now seek the unearned and undeserved immediate redemption of equality's promise. In doing so they unwittingly renounce the very ideal whose abuse they so recently declaimed.

No one in the history of the United States Supreme Court has ever surpassed the late Justice William O. Douglas in his zeal for human rights. Yet he had no greater difficulty than our own Justice Mosk in perceiving the inherent evil of the use of race or ethnic origin to obtain preferential treatment. His unforgettable words are: "One other assumption must be clearly disapproved: that blacks or browns cannot make it on their individual merit. That is a stamp of inferiority that a State is not permitted to place on any lawyer.... All races can compete fairly at all professional levels. So far as race is concerned, *any* state-sponsored preference to one race over another in that competition is in my view 'invidious' and violative of the Equal Protection Clause." (Italics added. *DeFunis* v. *Odegaard, supra*, 416 U.S. at pp. 343-344 [40 L.Ed.2d at p. 184].)

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[5] There are those who maintain that equality of opportunity is not yet a true reality. To the extent that this may be, further effort must be directed to that purpose, not to its antithesis.

Speaking virtually on all fours with regard to the very policy pursued by the University here, Justice Douglas said: "The difference between such a policy [one which permits consideration of an applicant's individual disadvantaged background, but without regard to race] and the one presented by this case is that the Committee would be making decisions on the basis of individual attributes, rather than according a preference solely on the basis of race. To be sure, the racial preference here was not absolute—the Committee did not admit all such applicants from the four favored groups. But it did accord all such applicants a preference by applying, to an extent not precisely ascertainable from the record, different standards by which to judge their applications, with the result that the Committee admitted minority applicants who, in the school's own judgment, were less promising than other applicants who were rejected. Furthermore, it is apparent that because the Admissions Committee compared minority applicants only with one another, it was necessary to reserve some proportion of the class for them, even if at the outset a precise number of places were not set aside.... Without becoming embroiled in a semantic debate over whether this practice constitutes a 'quota,' *it is clear that, given the limitation on the total number of applicants who could be accepted, this policy did reduce the total number of places for which DeFunis could compete—solely on account of his race.* Thus, as the Washington Supreme Court concluded, whatever label one wishes to apply to it, 'the minority admissions policy is certainly not benign with respect to nonminority students who are displaced by it.' 82 Wash. 2d, at 32, 507 P.2d, at 1182." (Italics added.) (*Id.*, at pp. 332-333 [40 L.Ed.2d at p. 178].)

To which we add that a policy of preference for certain ethnic or racial groups unrelated to "merit," a synonym for objective and measurable qualifications (which may certainly include racially neutral economic and other background factors—see *DeFunis, supra,* 416 U.S. at pp. 331-332, 340-341 [40 L.Ed.2d at pp. 177, 182]; *Bakke supra,* 18 Cal.3d at pp. 54-55; see also the enumerated factors used by the University for upward or downward adjustment of PFYA, p. 226, *ante*), injects into our professions an element of calculated mediocrity. Since measured and objective standards of eligibility are doubtless valid (it is nowhere contended they are not), it is logically irrefutable that one who obtains admission to a law school in preference to another solely because his ethnicity gave him a plus factor sufficient to overcome the otherwise greater measured qualifications of such other, is the latter's professional inferior. Predictably therefore he or she will serve the public with less competence. It bodes ill for a free and equality-dedicated society to accept the former as a professional practitioner and reject the latter. "Minorities in our midst who are to serve actively in our public affairs should be chosen on talent and character alone, not on cultural orientation or leanings." (*Id.*, at p. 334 [40 L.Ed.2d at p. 179].) Merit should be the sole determinant; and ethnicity, like race and color, is not merit.

Indeed nothing can be conceived so clearly calculated to destroy our democratic way of life than a departure from the basic principle of equality. No other right is so fundamental, so essential, to a free society. Any conscious inroad upon that *sine qua non* of liberty will one day lead to its destruction. Any one naive enough to believe that the day will arrive when the "chosen people" of today's minority preference programs will voluntarily announce their achievement of proportionality and renounce all further preferential rights ignores both human nature and history. That will never be. And at some future point the resentment of the Bakke or DeRonde or DeFunis of tomorrow will seek its own remedy, in the manner of the Turner, Hamm, and Lupper of yesterday. (*Turner* v. *Memphis* (1962) 369 U.S. 350 [7 L.Ed.2d 762, 82 S.Ct. 805]; *Hamm* v. *Rock Hill* (1964) 379 U.S. 306 [13 L.Ed.2d 300, 85 S.Ct. 384].)

The patience we urge upon the proponents of minority preference programs is in no way unreasonable or unattainable. It was practiced many times over in the past by ethnic groups who with time and perseverance achieved acceptable (to them) proportionality. The Irish, Italians, Jews, Greeks, Armenians, Poles, Slavs, etc., from the late 19th century to the years following World War II, all in their turn encountered the sting of intolerance and the affront of discrimination. Obviously the original immigrants, "the wretched refuse of your teeming shores," were for the most part unqualified to practice in the professions. But their sons and daughters proved less unqualified, as did even more so their grandsons and granddaughters; by self-sacrifice, hard work, and devotion to their progeny and their progeny's improvement, coupled with the sometimes grudging concession to them of the equal opportunity principle, they achieved satisfactory proportionality without the intervention of even the least governmentally sanctioned preference. There was a time, within this very century, when Jews attained a quota for admission to certain eastern universities; but that quota was maximal, not minimal. (See Belth, A Promise to Keep (1979) pp. 96-110, 197-199; Broun, Christians Only (1931) pp. 72-74.) They struggled against this discrimination in education not by seeking favoritism, but by insisting upon the simple and literal application of the equal protection clause and its legacy of equal opportunity. Their case was nobly presented by Alfred A. Benesch, a prominent Cleveland lawyer, in the following excerpt from a letter dated June 7, 1922 to President A. Lawrence Lowell of Harvard University. "Students of the Jewish faith neither demand nor expect any favors at the hands of the university, but they do expect, and have a right to demand, that they be admitted upon equal terms with students of other faiths, and that scholarship and character be the only standards for admission." (See A Promise to Keep, *supra*, at p. 101.) Of whatever else Jews might today complain, they cannot and do not complain of underrepresentation in the professions. This too is the destiny of today's "minorities," to be achieved not by unconscionable preferences but by patience, perserverence, and dedication.

The necessary time for today's complaining minorities to achieve proportionality[6] may cover several generations,[7] as it did with the other groups aforementioned. But is this too great a price to pay for the preservation of the priceless notion of equality? Other groups have paid it in the past; some will have to pay it now. Even so, groups must be distinguished from individuals. The principle of equality protects the rights of persons, not groups of persons, and ensures *now* that every individual from whatever group will not be discriminated against.

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[6] Proportionality in the equal opportunity context (or in any context) is of course merely an abstraction which cannot be expected ever to become a mathematical reality. As a desirable idealistic goal nonetheless, it proceeds on the simple hypothesis that since all racial and ethnic groups are innately equal, given the opportunity to compete on equal terms, all will ultimately find themselves represented in appreciable numbers in the multitude of human occupations and endeavors. Because however the true choice of endeavor is never collective but ever individual, hence random, the degree of representation will vary necessarily from location to location, occupation to occupation, and time to time. When we speak herein of proportionality, we have this concept of it in mind.

[7] This assertion views the matter in its most pessimistic, and probably unrealistic, light. It is gratifying for example to observe, in confirmation of our conviction, that so far as the Boalt Hall School of Law is concerned Japanese Americans have already

We acknowledge with both personal and fraternal respect the spirited dissent of our brother justice. Beyond all doubt it is sincerely and unselfishly motivated. Nonetheless, with some mild exasperation we remark that it is grounded on the incomprehensible postulate that the University's practice regarding Blacks, Native Americans, Filipinos, Asians and Chicanos does not give such persons a preference at all; rather it is but one of the "methods which better measure *actual* merit and thereby provide *more* equal opportunity for members of *all* racial, ethnic and linguisitic groups." (Italics added.) (See dissent at p. 244.) Apart from the fact that on its face such language clearly accentuates rather than negates the University's undeniable favoritism toward designated minorities, the postulate is irrational when measured against reality. If there is no true favoritism, how does it come about that of the 71 applicants with a lower PFYA than DeRonde who were offered admission, 69 possessed minority status? Any claim of no real favoritism deceives none but the most shortsighted, who unaccountably seem to harbor a despair unshared by us at the ability of minorities to compete on a fair and equal basis. Given the enormous excess of supply over demand for law students at Davis, we find it axiomatic that for every applicant who receives consideration he or she would not otherwise get because of race or ethnicity, another applicant is deprived of consideration likewise because of race or ethnicity.[8]

Concluding our observations, and following the example of state *Bakke* (18 Cal.3d at p. 53), we turn again to Justice Douglas: "The Equal Protection Clause commands the elimination of racial barriers, not their creation in order to satisfy our theory as to how society ought to be organized. The purpose of the University of Washington cannot

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achieved proportionality without the aid of special treatment; and Chinese Americans are not far behind. (See Murray, *Special Admissions at Boalt Hall*, (1976-1977) 28 J.Legal Educ. 358, 367.)

[8] The thrust of the dissent's criticism appears to be not that we insist upon merit as the sole criterion for admission, but that we define merit to include only LSAT scores and undergraduate college grades, i.e., PFYA. But neither Douglas, Mosk, nor we have so limited our definition (see pp. 232-233, *ante*); we have simply declared unequivocally that race, color, and ethnicity in no way constitute or remotely measure merit.

be to produce black lawyers for blacks, Polish lawyers for Poles, Jewish lawyers for Jews, Irish lawyers for Irish. *It should be to produce good lawyers for Americans*. . . ." (Italics added.) (*DeFunis* v. *Odegaard, supra*, 416 U.S. at p. 342 [40 L.Ed.2d at p. 183].) And finally, "There is no superior person by constitutional standards. A DeFunis who is white is entitled to no advantage by reason of that fact; nor is he subject to any disability no matter what his race or color. Whatever his race, he had a constitutional right to have his application considered on its individual merits in a racially neutral manner." (*Id.*, at p. 337 [40 L.Ed.2d at p. 180]; *Bakke, supra*, 18 Cal.3d at p. 55, fn. 23.)

We close with a quotation from Shakespeare, who so eloquently reminds us that competition on the basis of merit alone is the lifeblood of a democratic society.

"For who shall go about
To cozen fortune, and be honourable
Without the stamp of merit? Let none presume
To wear an undeserved dignity.
O, that estates, degrees and offices
Were not derived corruptly, and that clear honour
Were purchased by the merit of the wearer!
How many then should cover that stand bare!
How many be commanded that command!
How much low peasantry would then be glean'd
From the true seed of honour! and how much honour
Pick'd from the chaff and ruin of the times,
To be new varnish'd!" (Merchant of Venice, act II, scene IX.)

IV

Four days after the filing of our initial opinion herein the California Supreme Court filed *Price* v. *Civil Service Com.* (1980) 26 Cal.3d 257 [—Cal.Rptr. —, — P.2d —], in which it upheld minority preferences in public employment. We have been urged in a petition for rehearing by the University to reverse our holding because of this authority. We herewith explain our reasons for not doing so.

The specific holding of the *Price* case is summarized in its opening paragraph. It reads: "In this case we must determine whether a governmental entity may voluntarily adopt a race-conscious, affirmative action hiring program of limited duration to alleviate an underrepresentation of minority employees *which the entity finds is attributable to its own past discriminatory employment practices.*" (Italics added.) (26 Cal.3d at p. 261.) It is elementary that the extent of its binding precedent is determined by a decision's *ratio decidendi*, i.e., a decision is not authority for propositions which it was not required to and did not address. (6 Witkin, Cal. Procedure (2d ed. 1971) Appeal, § 676, pp. 4589-4590.)

The *Price* case judicially sanctions for California, despite our Constitution's article I, section 7,[9] what for the lack of a more descriptive term we may call the "atonement exception" to the equal protection guarantee, a concept recognized by much federal (and some state) authority. (See *Price*, *supra*, 26 Cal.3d at pp. 283-284.) There is of course no finding of past discrimination in the record here,[10] and therefore this exception does not apply. Nothing short of an all pervasive chosen people exception to article I, section 7, will be needed to validate the University's law school minority preference program.

If a chosen people exception is to be read into article I, section 7, our Supreme Court will have to do it; we shall not. When it does so, the high court doubtless will concurrently explain to California's people how they managed to place such a grave exception into their unequivocally worded equal protection and privileges or immunities clauses, without saying so. In that regard, let it be remembered that just five years ago (Nov. 5, 1974-Prop. 7), by a greater than 70 percent majority vote, the people adopted article I, section 7, into the Constitution, *their*

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[9] We note that in its offhand rejection of the independent state grounds argument, thereby leaving the special protections of California's Constitution to our school children and our criminals but not our adult "nonminorities," the *Price* majority mentions article I, section 7, subdivision (a) but says not a word about the even more equality compelling words of article I, section 7, subdivision (b).

[10] With as bold a bit of bootstrapping as we have yet encountered, the University urges in its rehearing petition that past discrimination at the Davis law school has indeed been proven. How? "In 1966 [the Davis law school became a law school that year], the percentage of minorities was 3.8%; in 1967, 7%; in 1968, 2.9%. . . . With the institution of the present program, the percentage of minorities in the school increased dramatically, from 13.1% in 1969 to 31.2% in 1975. . . ." By such double-think, all who are not preferred are thereby discriminated against. The number of minority students *after* institution of their favored treatment program necessarily exceeds the number before it; ergo, past discrimination. And of what does it consist? Of the failure to accord favored treatment. Unbelievable! "De l'audace, et encore de l'audace, et toujours de l'audace!" (Georges Jacques Danton, Sept. 2, 1792.)

Constitution (see Preamble, Cal. Const. and art. I, § 26), not ours, and not the Supreme Court's.

The judgment is affirmed. DeRonde shall recover costs on appeal.

Puglia, P. J., concurred.

REYNOSO, J.—I dissent. A race conscious admissions policy does not violate the California Constitution. Although the majority, like the dissent, seek the ideal of equal protection, they ignore both constitutional law and our national experience to reach a decision which will result in continued inequality. As in *Plessy* v. *Ferguson* (1896) 163 U.S. 537 [41 L.Ed. 256, 16 S.Ct. 1138], the parties are offered the ideal of legal equality, but the degradation of actual inequality. Half a century after *Plessy*, a realistic court saw that simple justice demanded the dignity of actual equality. (*Brown* v. *Board of Education* (1954) 347 U.S. 483 [98 L.Ed. 873, 74 S.Ct. 686, 38 A.L.R.2d 1180].) Today, a quarter of a century after *Brown*, racial, ethnic, and linguistic minorities have laid claim to the state and national policy of equality. The majority examine the constitutional tools anvilled for that purpose, and turn those tools into swords to be used against those whom the constitution seeks to protect. The majority provide, as did *Plessy*, continued inequality for minorities.

I

The merits of the constitutional arguments, compelling authority tells us, should not have been met. The trial court erred in the first instance by issuing its sweeping injunction against the university. The majority err thrice: they ignore the trial court's error; they proceed to decide the issue despite admitted mootness on a record devoid of evidence; and they base their decision on independent state grounds.

Injunction Unwarranted

The unauthorized remedy, the injunction, goes beyond a technical procedural violation. It amounts to an attempt by the trial court to resolve complex constitutional issues not properly before it. The judgment enjoining King Hall's admission procedures is void. The trial court (1) granted relief beyond the scope of the pleadings and the proof at trial, and (2) acted in excess of jurisdiction.

The university's contention that the trial court erred in granting equitable relief beyond the scope of the pleadings (see 1 Witkin, Cal. Procedure (2d ed. 1970) Jurisdiction, §§ 180, 192, pp. 708, 724) and the proof at trial is correct. DeRonde brought this action solely on his own behalf asking for individual relief, i.e., that *he* be admitted to King Hall. We do not deal with a class action or a taxpayer's suit. The case proceeded at trial on the theory of the pleadings. Accordingly, the inquiry at trial focused solely on the question of whether and to what extent DeRonde's personal application for admission to King Hall was denied on account of the law school's special admissions program.

The trial court found that, because he lacked the minimal qualifications, DeRonde would not have been admitted to King Hall even if the special admissions program had not been in operation. Since DeRonde had not sustained a legally cognizable injury, the trial court properly denied his application for writ of mandate to compel his admission to King Hall as well as his prayer for damages. Thus, the trial court had properly disposed of the issues raised by this case. Nonetheless, the trial court granted a judgment permanently enjoining the law school's use of special admissions criteria. This broad remedy represents a substantial departure from the issues actually litigated and the relief actually sought. (3 Witkin, Cal. Procedure (2d ed. 1971) Pleading, § 301, pp. 1974-1975.) The judgment violated the basic requirement that the allegations of the complaint and the proof at trial must support the remedial relief granted.[1]

In addition, the trial court acted in excess of jurisdiction. A court "does not have unlimited power to act in the cause. . . . [T]he court with such fundamental jurisdiction [over the subject matter and the parties] may nevertheless be without authority or power (jurisdiction) to take certain steps or grant certain kinds of relief. . . . The unauthorized acts may be said to be *acts in excess of jurisdiction* by a court having *jurisdiction of the cause and parties,* the term 'jurisdiction' being used here in two distinct senses." (Italics in original; 1 Witkin, Cal. Procedure (2d ed. 1970) Jurisdiction, § 179, p. 706; *Fortenbury* v. *Superior Court* (1940) 16 Cal.2d 405 [106 P.2d 411].) The trial court granted DeRonde a remedy which he had no standing to assert. The fact that this remedy might benefit a hypothetical class of people is irrelevant because DeRonde's suit was not brought by him in a representative capacity. It is beyond the trial court's authority to render a judgment in favor of persons not a party to the action. (1 Witkin, Cal. Procedure (2d ed. 1970) Jurisdiction, § 205, pp. 737-738.)[2]

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[1] This dispositive contention, while ignored by the majority, is neither novel nor complicated. In a factually dissimilar case, *Sharp* v. *Big Jim Mines* (1940) 39 Cal.App.2d 435 [103 P.2d 430], this court considered a similar legal question. There, the trial court correctly ruled that a purported assessment of corporate stock was void for lack of a quorum at a certain stockholders meeting. The court further enjoined any future assessment of the stock until specified conditions were met. Since the remedy exceeded the scope of the pleadings in granting relief from future assessments, which asked only for relief from the assessment made (*id.*, at p. 442), we modified the judgment to conform to the pleadings and findings. A similar ruling is compelled in the present case.

Mootness and the Question of Great Public Importance

The majority acknowledge the correctness of the university's position that DeRonde's graduation from law school left him with no legally cognizable interest in the injunction. The proper disposition would be to reverse the judgment with instructions to the trial court to dismiss the cause (*Paul* v. *Milk Depots, Inc.* (1964) 62 Cal.2d 129, 134 [41 Cal.Rptr. 468, 396 P.2d 924]; see also, 6 Witkin, Cal. Procedure (2d ed. 1971) Appeal, § 462, pp. 4418-4419.) The legal conclusion has been charted. Indeed, the path is well worn.

The majority veer from the travelled path and, as happens, lose their way. While the question of a race and ethnic conscious admission policy is of great public interest, the question of whether an appellate court should rule on a moot issue is not thereby ended. We must ask: (1) is the conclusion of mootness compelled or is it an open question? (2) is the record one in which we can have confidence that the principal evidentiary and theoretical issues have been explored, or is the record so truncated that we should pause before deciding important constitutional issues? (3) can the same issue be raised with relative speed but without the issue being moot?

First, there is no question that the case at bench is moot. While not conclusive this is one factor which mitigates against a decision on the merits. The dissent in *DeFunis* did not say otherwise. (*DeFunis* v. *Odegaard* (1974) 416 U.S. 312, 320-344 [40 L.Ed.2d 164, 171-185, 94 S.Ct. 1704].) The record in *DeFunis*, as Justice Brennan correctly pointed out, did not compel a conclusion of mootness. (*Id.*, at 416 U.S. at p. 350 [40 L.Ed.2d at p. 188].) *DeFunis*, unlike DeRonde, had not graduated. Unlike *DeFunis*, the record before us does compel, as the majority agree, a conclusion of mootness.

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[2] There is the additional question as to whether an injunction can be granted to a class where there is no basis for personal relief. (See *Minnick* v. *Department of Corrections*, 95 Cal.App.3d 506, 526 [157 Cal.Rptr. 260].)

Second, the record before us is woefully deficient. It cannot, and does not, support the broad conclusion of fact required to reach constitutional issues. The record should present the issues clearly. This record does not. In large measure it is the trial court's decision *not* to permit intervention by interested parties which left this record in its debilitated stage. The majority, in a companion case, *DeRonde* v. *Regents of University of California* (1980) (100 Cal.App.3d 900 [— Cal.Rptr. —], sustained the trial court's decision. In my dissent I stressed the obvious: that in this type of case neither DeRonde nor the university is interested in pointing to past discrimination or the discriminatory effect of standardized tests. (*Id.*, at p. 906; *Steelworkers* v. *Weber* (1979) — U.S. —, — [61 L.Ed.2d 480, 495, 99 S.Ct. —].) Yet those factors may be dispositive. Now, on the basis of this undernourished record, the majority act on this important constitutional question. The paucity of the record should have convinced the majority, as it does me, that a decision on the merits is a particular disservice in the development of constitutional law, and thereby a disservice to the protection of all our residents.

Third, the constitutional propriety of a race and ethnic conscious admissions policy can be brought before the courts in a timely manner. "Moreover, just because this particular case did not reach the Court until the eve of the petitioner's graduation from Law School, it hardly follows that the issue he raises will in the future evade review. If the admissions procedures of the Law School remain unchanged, there is no reason to suppose that a subsequent case attacking those procedures will not come with relative speed to this Court, now that the Supreme Court of Washington has spoken." (*DeFunis, supra*, 416 U.S. 312, 319 [40 L.Ed.2d 164, 170].) There is no impediment. Indeed, the majority's assertion that like litigation looms on the horizon makes this case particularly inappropriate for disposition on the merits. (*Ibid.*) Where, then, is the need for this advisory opinion (6 Witkin, Cal. Procedure, *supra*, Appeal, § 470, p. 4426), aside from the unseemly eagerness to decide this issue? The legal and practical obstacles are meant to dissuade such a reaching out. The majority, like the lemming, travel a preconceived course unmindful of what the end will bring.

Inapplicability of Independent State Grounds

Since the federal Constitution permits a race and ethnic conscious admissions policy (*University of California Regents* v. *Bakke*, 438 U.S. 265, 287-288, 314 [57 L.Ed.2d 767, 769, 786, 98 S.Ct. 2733]), the majority turn to the California Constitution to strike down the King Hall plan. The majority repeat their analytical agility by turning the concept of independent state grounds upside down.

I agree with the majority that decisions of the United States Supreme Court defining fundamental civil rights under the federal Constitution are persuasive authority to be afforded respectful consideration, but are to be followed by California courts only when they provide no less individual protection than is guaranteed by California law. (*Serrano* v. *Priest* (1976) 18 Cal.3d 728, 764 [135 Cal.Rptr. 345, 557 P.2d 929].) The majority, however, make a fundamental analytical misstatement in asserting that Justice Mosk's analysis, in the California *Bakke* decision, implicitly defines more stringent California requirements in determining whether an individual's fundamental civil rights have been violated. The California Supreme Court (*Bakke* v. *Regents of University of California*, 18 Cal.3d 34, 49-51 [132 Cal.Rptr. 680, 553 P.2d 1152]), like the United States Supreme Court (*University of California Regents* v. *Bakke*, *supra*, 438 U.S. 265, 290-291, 305 [57 L.Ed.2d 750, 771, 781]), utilized strict scrutiny in its analysis. Both decisions apply strict scrutiny since they each conclude that use of race by the university's admissions program is suspect. Justice Powell explains for the majority: "[P]etitioner argues that the court below erred in applying strict scrutiny to the special admissions program because white males, such as respondent, are not a 'discrete and insular minority' requiring extraordinary protection from the majoritarian political process. [Citation omitted.] This rationale, however, has never been invoked in our decisions as a prerequisite to subjecting racial or ethnic distinctions to strict scrutiny. Nor has this Court held that discreteness and insularity constitute necessary preconditions to a holding that a particular classification is invidious.... Racial and ethnic distinctions of any sort are inherently suspect and thus call for the most exacting judicial examination." (*Id.*, at pp. 290-291 [57 L.Ed.2d at p. 771].) Since strict scrutiny is the most stringent form of constitutional review in which the courts may engage, the majority are patently incorrect in stating that the California *Bakke* equal protection analysis defines more stringent requirements in determining whether an individual's fundamental civil rights have been violated.

Minnick v. *Department of Corrections, supra,* 95 Cal.App.3d 506, decided after the California and United States *Bakke* decisions, perceives both decisions as being equally protective of the fundamental civil rights of the individual. It reasons: "Respondents have asserted 'fundamental civil rights' in this action, but we are not persuaded that the rationale of U.S. *Bakke* provides them with 'less individual protection than is guaranteed by California law [i.e., the Cal. Const., art. I, § 7].' Under that rationale, the evidence does not support the declaration that section 7 of article I has been violated." (*Id.*, at p. 523.) The *Minnick* court is correct. Let us look at *Minnick*. Two male Caucasian employees of the Department of Corrections alleged that the department had discriminated against them in carrying out an affirmative action program which aided certain racial and ethnic groups and women in obtaining promotions and transfers within the department. The Court of Appeal held that the evidence did not support the trial court's declaration that the defendants had violated plaintiffs' fundamental civil rights. (Cal. Const., art. I, §§ 7, 8.)

Decisional law causes me to reject the majority's view of independent state grounds. When basing civil rights decisions on independent state grounds, the effort of the California Supreme Court has been to protect traditionally politically powerless groups. Former Chief Justice Wright of the California Supreme Court, called attention to this development in California constitutional law. (See Wright, *The Role of the Judiciary: From Marbury to Anderson* (1972) 60 Cal.L.Rev. 1262.) He analyzed cases such as *Mulkey* v. *Reitman* (1966) 64 Cal.2d 529 [50 Cal.Rptr. 881, 413 P.2d 825] (invalidating an initiative measure which prevented the state from interfering with a property owner's absolute discretion to sell, lease, or rent to racial and ethnic minorities); *Sail'er Inn, Inc.* v. *Kirby* (1971) 5 Cal.3d 1 [95 Cal.Rptr. 329, 485 P.2d 529, 46 A.L.R.3d 351] (striking down a statute prohibiting females from working as bartenders); and *Serrano* v. *Priest*, 5 Cal.3d 584 [96 Cal.Rptr. 601, 487 P.2d 1241] (striking down the state's property tax system for funding public schools since it denied equal protection to the poor). Justice Wright explains that the California Supreme Court "intervened to protect minority interests that were neglected by the political process." (*Id.*, at p. 1272.) That is, the California Supreme Court has sought to protect those discrete and insular minorities with greater sensitivity than the United States Supreme Court. The majority's turn-around at this late date to read the California Constitution more restrictively than the United States Constitution is done against the foregoing decisional authority. Such a turn-around cannot stand.

II

The majority set forth their personal philospthy which rejects all race and ethnic consciousness in the University's admissions policy. Implementation of their philosophy would eradicate the modest gains which have been made during the last decade and return us to nearly all white law schools.[3] Their entire discussion emanates from the majority's deeply felt beliefs, but it finds no basis in the record.[4] Neither, I suggest, does it find support in the practical experience of law schools. The law schools must be free to exercise professional discretion in seeking methods which better measure actual merit and thereby provide more equal opportunity for members of all racial, ethnic and linguistic groups. The majority misread the California *Bakke* decision to reach a contrary conclusion.

The two major aims of the university's special admission program in *Bakke* were "to integrate the student body and to improve medical care for minorities." (*Bakke, supra,* at p. 53.) The California *Bakke* decision assumed that those two objectives "meet the exacting standards required to uphold the validity of a racial classification insofar as they *establish a compelling governmental interest.*" (Italics added; *ibid.*)

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[3] The university's brief quotes from the amicus brief filed on behalf of the Association of American Law Schools in the *Bakke* case, as follows: "The unpleasant but unalterable reality is that affirmance of the decision below would mean, for the law schools, a return to the virtually all-white student bodies that existed prior to the Civil Rights Act of 1964 and subsequent congressional enactments which, after so many years of default, finally committed the nation to the goal of racial equality. More specifically, as a result of the programs described in the preceding pages, 1,700 black and 500 Chicano students were admitted to the fall, 1976 entering class of the nation's law schools. They represented 4.9% and 1.3% respectively, of the total of 43,000 who were admitted. If the schools had not taken race into account in making their admissions decisions, but had otherwise adhered to the admissions criteria they employ, the number of black students would have been reduced to no more than 700 and the number of Chicanos to no more than 300. It is virtually certain, however, that the reduction would have been greater and it is not at all unlikely that even this reduced number would have again been reduced by half or more. Thus, the nation's two largest racial minorities, representing nearly 14% of the population, would have had at most a 2.3% representation in the nation's law schools and, more likely, no more than about 1%." The issue of integration in law schools has been national as well as local.

[4] Of necessity this dissent must go beyond the record to respond to the majority's statements which have no basis in the record. I will judicially notice certain policies and studies. If the parties dispute the matters I judicially notice, they may provide the court appropriate information in a petition for rehearing. "This procedure is deemed sufficient compliance with the requirement of section 459, subdivision (c) of the Evidence Code." (*People* v. *Hallman* (1973) 35 Cal.App.3d 638, 641, at fn. 1 [110 Cal.Rptr. 891].)

The basis for the decision was on an entirely different ground: "Nevertheless, we are not convinced that the University has met its burden of demonstrating that the basic goals of the program cannot be substantially achieved by means less detrimental to the rights of the majority." (*Ibid.*) Thus, it is only the *means* of achieving the goals and not the goals, as the majority appear to assume, which fall short of the constitutional mandates according to the California *Bakke* decision.

The university's major goals in the case at bench are an echo of the two constitutionally approved goals in *Bakke*. First, it aims to change the student body by its integration. Second, it aims to change the profession so that it is better able to serve the needs of all persons and groups, including minorities. The State of Washington Supreme Court, in considering *DeFunis*, spoke to those issues: "The legal profession plays a critical role in the policy making sector of our society, whether decisions be public or private, state or local. That lawyers, in making and influencing these decisions, should be cognizant of the views, needs and demands of all segments of society is a principle beyond dispute. The educational interest of the state in producing a racially balanced student body at the law school is compelling.

"Finally, the shortage of minority attorneys—and, consequently, minority prosecutors, judges and public officials—constitutes an undeniably compelling state interest. [Fn. omitted.] If minorities are to live within the rule of law, they must enjoy equal representation within our legal system." (*DeFunis* v. *Odegaard* (1973) 82 Wn.2d 11, 35 [507 P.2d 1169].) Like the goals in *Bakke* or *DeFunis*, we may safely assume the university goals in the case at bench are compelling state interests.

The dispositive issue, we have seen, is not the compelling nature of the interest, but whether the goals can be achieved by means "less detrimental" to the nonminorities. In that regard, unlike the majority, I believe the difference between *Bakke* and the case at bench is crucial. The record in *Bakke*, the California Supreme Court found, established *quotas* to be filled by minorities. It was that "set aside", the quota, which was found constitutionally infirm. Unlike the medical school in *Bakke*, the law school has set no quotas. Neither did it compare minority applicants only with the other minorities; all applicants were compared against one another. Its admissions policy, which calls only for consciousness of race and ethnicity among many factors, is substantially less intrusive than the *Bakke* quota system, and in my view is constitutionally permissive pursuant to the rationale of the California *Bakke* decision.[5] A race and ethnic conscious admissions policy provides the law school with a vehicle for evaluating an applicant's potential for law study and for entering the legal profession. The majority's broad statement that those admitted minorities were "less promising" than other students admitted for the study of law or that the admissions policy has led to "mediocrity" is an expression of opinion not grounded in the record. Nor does the record support the majority notion that merit is somehow synonymous with the objective criteria used.[6] The LSAT, by way of example, was not designed to measure merit.

Dean Griswold placed the issue of merit in proper context when he wrote: "[C]apacity for these skills [advocacy, counselling, drafting, negotiations, client-relation, fact investigation and legal preparation] is not built into the LSAT, although other activities of the applicant may tend to predict the existence of capacity for one or more of them. Nor does the LSAT score or college grade average reflect the factors of judgment, professionalism, or ethics. The quantitative predictors, in view of the range of skills needed by a practitioner, are simply not good enough to be the sole basis for admission to law school." (Griswold, *Some Observations on the DeFunis Case* (1975) 75 Colum.L.Rev. 512,

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[5] Nothing in the record suggests a conclusion that disadvantaged students other than minorities were not "eligible for sympathetic consideration." (*Bakke, supra,* at p. 55.) The fact that minorities with high predictive factors, and nonminorities with low predictive factors were admitted, appears to confirm this observation. Upon such a sympathetic consideration, it is not surprising, in light of the discriminatory effect of formal predictive factors, and the constitutionally permissive aim of integration, that a larger percentage of minorities were found to be particularly good prospects for the study of law and for the legal profession.

[6] There is no constitutional rule which says that objective criteria must be used in admissions. In *Bakke* the California Supreme Court explained: "We observe and emphasize in this connection that the University is not required to choose between a racially neutral admission standard applied strictly according to grade point averages and test scores, and a standard which accords preference to minorities because of their race.

"While minority applicants may have lower grade point averages and test scores than others, we are aware of no rule of law which requires the University to afford determinative weight in admissions to these quantitative factors. In practice, colleges and universities generally consider matters other than strict numerical ranking in admission[s] decisions. (O'Neil, *Preferential Admissions: Equalizing the Access of Minority Groups to Higher Education* (1971) 80 Yale L.J. 699, 701-705.) The University is entitled to consider, as it does with respect to applicants in the special program, that low grades and test scores may not accurately reflect the abilities of some disadvantaged students; and it may reasonably conclude that although their academic scores are lower, their potential for success in the school and the profession is equal to or greater than that of an applicant with higher grades who has not been similarly handicapped." (*Bakke, supra,* at p. 54.)

515.) Indeed, I do not understand those who have developed the objective criteria like the LSAT to claim otherwise. The law school admissions bulletin, issued by the law school admissions council and placed in each LSAT registration packet explains: "The LSAT was not designed for nor is it intended to be used to predict success in the practice of law. No study purporting to show a correlation between LSAT scores and success in the practice of law is known to LSAC, LSAS or ETS. Nor have correlations between parental income and LSAT scores been investigated." In fact, the LSAT has been designed to predict only the first year law school grades. And even that, as the law school admissions bulletin explains, is of limited assistance. "The extent to which the use of LSAT scores improves the accuracy of predicting first year law school grades varies from school to school. In the validity studies conducted in 1979 the LSAT accounted for variance in the first year grades by law school ranging from .25% to 45%. Correlations between LSAT scores and successful completion of the course of study in law schools has not been examined by LSAC, LSAS or ETS." Those knowledgeable about legal education will meet with dismay the inaccuracy of the majority's assertion that standardized predictive factors are a measurement of merit.

Neither LSAT nor the predictive factors measure, nor claim to measure, actual merit. The reality that reliance on those standardized criteria has a disparately negative effect on minority applicants becomes of prime concern. The Council on Legal Educational Opportunity, in its amicus brief before the United States Supreme Court in the *Bakke* decision, indicated that "standardized testing, as admission criteria, is the single, most responsible factor for the exclusion of blacks and other minorities from the profession." (See Swineford, *Comparison of Black Candidates and Chicano Candidates With White Candidates, Law School Admission Council Research* (May 1973).) A detailed study by the law school admissions council supports that statement. The author of that study concluded "if numerical predictors were employed exclusively for all applicants, the resultant reduction would be 76-78 percent for blacks and 45-58 percent for Chicanos. When law schools were asked to estimate the number of those minorities who would have been admitted if their minority status were unknown, they estimated reductions of 80% for blacks and 70% for Chicanos. The percentage of blacks among first year law students would drop to between 1 and 2 percent from the current 5.3 percent and the percentage of Chicanos would fall to between 0.4 percent to 0.8 percent from the current 1.36 percent." (LSAC, *Applications and Admission to*

ABA Law Schools: An Analysis of National Data to the Class Entering in 1976 (May 1977) p. 567.)

The law schools, recognizing that standardized criteria do not measure merit and potential and that they do discriminate against minorities, have sought a method whereby they can look at each individual applicant, including minorities, to measure his or her true potential. The special admissions program which identifies members of race, ethnic and linguistic minority groups is meant to facilitate such a review.

In interpreting the California *Bakke* decision we must be mindful of the history and tradition of the California Supreme Court in seeking to protect the constitutional rights of politically powerless minorities. Its author, Justice Mosk, has a long and distinguished record of concern for the constitutional rights of discrete minorities (linguistic, racial, ethnic, sex) as well as those of prisoners, consumers, and the poor. Accordingly, I cannot accept the reading of the California *Bakke* decision given by the majority, a reading which would be destructive of the rights of racial, ethnic and linguistic minorities.

Our belief in human dignity underlies our state and national constitutions. Each individual has the fundamental right to be different in language (see *Meyer* v. *Nebraska* (1922) 262 U.S. 390 [67 L.Ed. 1042, 43 S.Ct. 625, 29 A.L.R. 1446]; *Castro* v. *State of California* (1970) 2 Cal.3d 223 [85 Cal.Rptr. 20, 466 P.2d 244]) and, ethnicity (see *Hernandez* v. *Texas* (1954) 347 U.S. 475 [98 L.Ed. 866, 74 S.Ct. 667]), or race (see *Brown* v. *Board of Education* (1954) 347 U.S. 483 [98 L.Ed. 873, 74 S.Ct. 686, 38 A.L.R.2d 1180]), and yet be treated with the dignity which due process and the equal protection of the law entails. But the right to be treated equally does not mean that treatment must be identical.[7]

King Hall, the University of California at Davis School of Law, from whence this lawsuit emanates, was named in honor of Martin Luther King, Jr., a black minister. Through the moral force of his character and faith he inspired America to seek after justice, and he shared with

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[7] Thus, a child who speaks Chinese but is "taught" only in English is being treated the same as an English-speaking child, but it cannot be argued that the treatment is equal: while the English speaker flourishes, the Chinese speaker flounders. (See *Lau* v. *Nichols* (1974) 414 U.S. 563 [39 L.Ed.2d 1, 94 S.Ct. 786].) Equality must be measured according to its effect.

America his dream of a true and abiding equality among all racial, ethnic and linguistic groups who call this land their own. We have paid homage to his ideals by naming a law school in his honor. But we honor his dream with greater warmth when we march that added step or two, as did he, toward the mountain top of equality. King Hall took that step.

I would reverse.[8]

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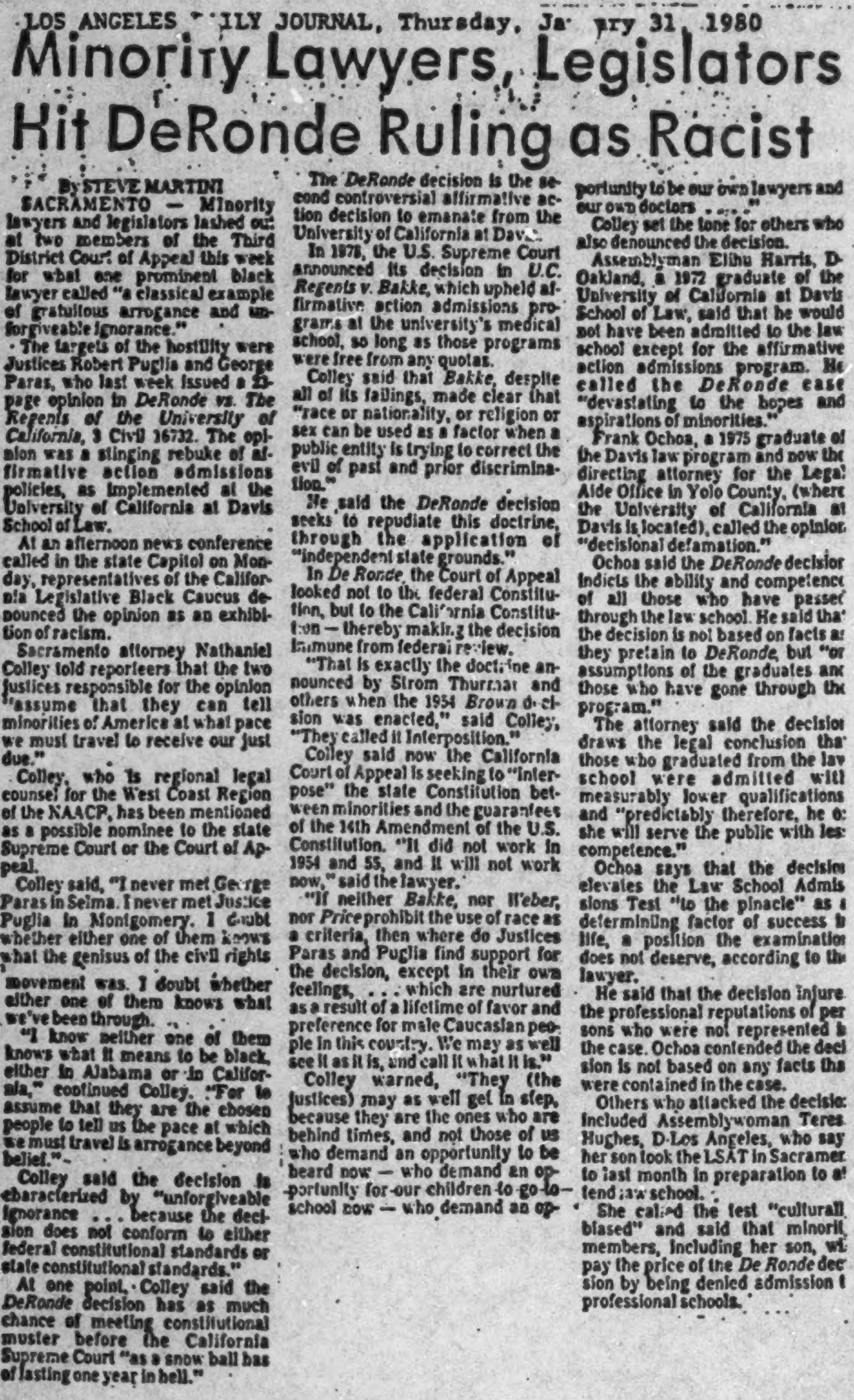
[8] I add this footnote in response to the petitions for reconsideration. I would grant the University's petition and deny DeRonde's. The reason is easily understood. As indicated by the majority the California Supreme Court decided *Price* v. *Civil Service Com.* (1980) 26 Cal.3d 257 [— Cal.Rptr. —, — P.2d —], just a few days after our opinion was filed. *Price* ruled that race conscious hiring by a public entity is permitted under the California as well as the United States Constitutions. The federal *Bakke* case, our State Supreme Court ruled, is the law of the land including California. That is, independent state grounds, the sole basis for the majority opinion, was squarely and absolutely and firmly and clearly rejected. The majority criticize the *Price* decision. That is permissible. We as appellate courts are free to criticize Supreme Court rulings. What we are not free to do is to refuse to follow those rulings.

The majority's apparent attempt to distinguish *Price* fails. *Price*, the majority assert, is based on past discrimination. In the case at bench, the majority explain there is no such showing. However, the federal *Bakke* decision was *not* based on past discrimination. The California Supreme Court, we have noted, held that the federal *Bakke* controls. Sadly and with due respect, I am forced to the conclusion that the majority have done the impermissible; they have refused to follow a clear ruling of our state Supreme Court.



LOS ANGELES DAILY JOURNAL, Thursday, January 31, 1980

Minority Lawyers, Legislators Hit DeRonde Ruling as Racist

By STEVE MARTINI

SACRAMENTO — Minority lawyers and legislators lashed out at two members of the Third District Court of Appeal this week for what one prominent black lawyer called "a classical example of gratuitous arrogance and unforgiveable ignorance."

The targets of the hostility were Justices Robert Puglia and George Paras, who last week issued a 23-page opinion in *DeRonde vs. The Regents of the University of California*, 3 Civil 16732. The opinion was a stinging rebuke of affirmative action admissions policies, as implemented at the University of California at Davis School of Law.

At an afternoon news conference called in the state Capitol on Monday, representatives of the California Legislative Black Caucus denounced the opinion as an exhibition of racism.

Sacramento attorney Nathaniel Colley told reporteers that the two justices responsible for the opinion "assume that they can tell minorities of America at what pace we must travel to receive our just due."

Colley, who is regional legal counsel for the West Coast Region of the NAACP, has been mentioned as a possible nominee to the state Supreme Court or the Court of Appeal.

Colley said, "I never met George Paras in Selma. I never met Justice Puglia in Montgomery. I doubt whether either one of them knows what the genisus of the civil rights movement was. I doubt whether either one of them knows what we've been through.

"I know neither one of them knows what it means to be black, either in Alabama or in California," continued Colley. "For to assume that they are the chosen people to tell us the pace at which we must travel is arrogance beyond belief."

Colley said the decision is characterized by "unforgiveable ignorance . . . because the decision does not conform to either federal constitutional standards or state constitutional standards."

At one point, Colley said the *DeRonde* decision has as much chance of meeting constitutional muster before the California Supreme Court "as a snow ball has of lasting one year in hell."

The *DeRonde* decision is the second controversial affirmative action decision to emanate from the University of California at Davis.

In 1978, the U.S. Supreme Court announced its decision in *U.C. Regents v. Bakke*, which upheld affirmative action admissions programs at the university's medical school, so long as those programs were free from any quotas.

Colley said that *Bakke*, despite all of its failings, made clear that "race or nationality, or religion or sex can be used as a factor when a public entity is trying to correct the evil of past and prior discrimination."

He said the *DeRonde* decision seeks to repudiate this doctrine, through the application of "independent state grounds."

In *De Ronde*, the Court of Appeal looked not to the federal Constitution, but to the California Constitution — thereby making the decision immune from federal review.

"That is exactly the doctrine announced by Strom Thurmand and others when the 1954 *Brown* decision was enacted," said Colley. "They called it Interposition."

Colley said now the California Court of Appeal is seeking to "interpose" the state Constitution between minorities and the guarantees of the 14th Amendment of the U.S. Constitution. "It did not work in 1954 and 55, and it will not work now," said the lawyer.

"If neither *Bakke*, nor *Weber*, nor *Price* prohibit the use of race as a criteria, then where do Justices Paras and Puglia find support for the decision, except in their own feelings, . . . which are nurtured as a result of a lifetime of favor and preference for male Caucasian people in this country. We may as well see it as it is, and call it what it is."

Colley warned, "They (the justices) may as well get in step, because they are the ones who are behind times, and not those of us who demand an opportunity to be heard now — who demand an opportunity for our children to go to school now — who demand an opportunity to be our own lawyers and our own doctors . . . ."

Colley set the tone for others who also denounced the decision.

Assemblyman Elihu Harris, D-Oakland, a 1972 graduate of the University of California at Davis School of Law, said that he would not have been admitted to the law school except for the affirmative action admissions program. He called the *DeRonde* case "devastating to the hopes and aspirations of minorities."

Frank Ochoa, a 1975 graduate of the Davis law program and now the directing attorney for the Legal Aide Office in Yolo County, (where the University of California at Davis is located), called the opinion "decisional defamation."

Ochoa said the *DeRonde* decision indicts the ability and competence of all those who have passed through the law school. He said that the decision is not based on facts as they pretain to *DeRonde*, but "on assumptions of the graduates and those who have gone through the program."

The attorney said the decision draws the legal conclusion that those who graduated from the law school were admitted with measurably lower qualifications and "predictably therefore, he or she will serve the public with less competence."

Ochoa says that the decision elevates the Law School Admissions Test "to the pinacle" as a determining factor of success in life, a position the examination does not deserve, according to the lawyer.

He said that the decision injures the professional reputations of persons who were not represented in the case. Ochoa contended the decision is not based on any facts that were contained in the case.

Others who attacked the decision included Assemblywoman Teres Hughes, D-Los Angeles, who say her son took the LSAT in Sacramento last month in preparation to attend law school.

She called the test "culturall biased" and said that minorit members, including her son, wi pay the price of the *De Ronde* decsion by being denied admission t professional schools.

Mr. **Paras**. Senator Eagleton, I would ask you once again to read it. If you conclude, as you have already, that I am a bigot as a result of that, because I have insisted upon equality for all, on a equal basis, so be it. I cannot do anything more than that.

All the condemnation against me boils down to the letter I wrote to Judge Reynoso, which I remind you once more was a highly personal letter, not intended to be public. Months later, I found myself in this position, where the Governor had appointed Judge Reynoso to the Supreme Court of California. He had to be confirmed by the commission of three persons to whom my letter is addressed. The public was invited to come. I felt a duty to the public to object to the confirmation of a person whom I did not think to be good for the State of California. The problem was, how do I exercise that duty to the public? Do I shut up and back away, do I appear at the hearing, do I write a separate letter of objections, or one way was to simply write a letter which reflected my true genuine feelings that were very personal at the time that I wrote them.

I chose that way. Perhaps if I had to do it again, I would do it a different way. But I might say I recognize that the letter was strong. I simply felt that this would expose him for what he is, and I did not think he was qualified to sit on the court, and me for what I am, and let the public judge.

The conclusion seems to be that everyone is taking quotes from the letter and branding me as a bigot. I am not a bigot, Senator. I am no more a bigot than you are, and I know you are not one. You have accused me wrongly, and I am sorry you have not read that letter as I think you should have read it.

My sin apparently is that Judge Reynoso was a sacred cow in California, and I had no right to criticize him as an appointee because he was the first Hispanic to be appointed. That is apparently what it is that is wrong. That is all I have to say.

Senator **Quayle**. Gentlemen, thank you very much.

At this point we will insert in the record the biographical sketches, statements, and questions and responses submitted for inclusion in the record of the nominees and Senators.

[The information referred to follows:]

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: OLSON	WILLIAM	JEFFREY
(LAST)	(FIRST)	(OTHER)

Position to which nominated: Board of Directors, Legal Services Corp.

Date of nomination: March 1, 1982

Date of birth: 23 (DAY) October (MONTH) 1949 (YEAR)

Place of birth: Paterson, New Jersey

Marital status: Married

Full name of spouse: Janet Elaine Bollen Olson

Name and ages of children: none

Education:

Institution	Dates attended	Degrees received	Dates of degrees
University of Richmond School of Law	8/73-5/76	J.D.	5/76
Brown University Providence, Rhode Island	9/67-6/71	A.B.	6/71
The Peddie School Hightstown, New Jersey	9/65-6/67	Diploma	6/67

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

George Washington Honor Medal, Nathan Hale Youth Awards Program
Freedoms' Foundation, Valley Forge, Pennsylvania (1964)

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (If any)	Dates
Davis Memorial Goodwill Industries	Board of Governors Board of Trustees	3/78-3/80 3/80-Present
Crime Victims Legal Advocacy Inst. (now Victims Assistance Leg. Org.)	Secty. Board of Directors, Treas.	12/79-Present 12/79-Present 12/79-1982
Virginia State Bar; D.C. Bar	—	1976-present
Va. Trial Lawyers Assn; Am. Bar Assn.	—	1976-present
Fed. Bar Assn.	—	1976-present
Am. Judicature Soc.	—	1977-present
Va. Bar Assn.; Bar Assn. of the D.C.	—	1976-present
Fairfax Committee of 100	—	1981-present
Phi Alpha Delta Leg. Frat.		1974-present
Nat. Security Pol. Act. Comm.	Dir. & Legal Counsel	1977 - 1980

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

10/81 - Present	Smiley, Olson & Gilman, 1819 H St., N.W., Wash, D.C. 20006 Partner
8/80-10/81	Smiley, Murphy, Olson & Gilman, 1819 H St., N.W., Wash, D.C. 20006, Partner
2/79-8/80	William J. Olson, 1819 H Street, N.W., Wash, D.C., Attorney
6/76-2/79	Jackson, Campbell & Parkinson, One Lafayette Ctr., 1120 20th Street, N.W., Wash, D.C. 20036, Associate
5/75-8/75	Virginia State Bar, 700 E. Main Street, Richmond, Va. 23219, Free Lance Writing
5/75-8/75	American Enterprise Institute, 1150 17th Street, N.W. Washington, D.C. 20036, Free Lance Writing and Editing
5/74-8/74	Jackson, Parkinson & Jackson (now Jackson, Campbell & Parkinson), see above, Law Clerk
7/73-8/73	Unemployed
2/73-6/73	Office of Economic Opportunity, Office of Program Review, Washington, D.C., grant and contract review
12/72-1/73	American Conservative Union, 422 1st Street, SE, Washington, D.C. 20003, fund raising
7/72-12/72	DeSimone for Governor Campaign, Weybosset Street, Providence, Rhode Island, Campaign Scheduler
11/71-6/72	U.S. Dept. of Transportation, 400 Seventh Street, S.W. Washington, D.C., Researcher
6/71-10/71	Domestic Council, Exec. Office of the President, Old Exec Office Building, Washington, D.C. 20506, White House Intern

Government experience:

List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

Member, Subcommittee on Export Administration, President's Export Council (1982 - Present)

Member, Citizen's Committee on I-66 Transfer Station, Fairfax County, Virginia (Solid Waste Transfer Station) (1980)

Team Leader, Legal Services Corporation Transition Team, Office of the President-Elect (November 1980-January 1981)

Published writings:

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

- "Postal Rate Scoreboard: Pluses and Minuses Added Up", Fund Raising Management, February 1982 (co-author)
- "Critical Issues Ahead for Non-Profit Mailers", Fund Raising Management, February 1981 (co-author)
- "The Postal Puzzle", Philanthropy Monthly, May 1980 (coauthor)
- Tuition Tax Credits and Alternatives, a legislative analysis published
- by the American Enterprise Institute for Public Policy Research (AEI)
- Debating National Health Policy, a national high school debate manual, 1977-1978, published by AEI (co-author) — 1977
- The Criminal Justice System, a national high school debate manual, 1976-1977 debate topic, published by AEI (co-author) — 1976

Political affiliations and activities:

List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

1981 - present, member, State Central Committee, Republican Party of Virginia; 1980 - present, Chairman, Fairfax County (Virginia) Republican Committee; 1980, Coordinator, Fairfax County Reagan/Bush Campaign; 1979-80, Co-Coordinator, Mason District, Fairfax County, Reagan Campaign; 1979-1980, Board of Directors, National Security Political Action Committee; 1980, Co-Coordinator, Mason District, Fairfax County, Frank Wolf for Congress Campaign; 1979, Issues Advisory Committee Member, Virginia 19th Legislative District Republican Committee; 1979, Member, Campaign Committee: Tom Davis for Mason District Supervisor, and John Buckley for Delegate; Member, Statewide Advisory Committee, John Warner for U.S. Senate Committee; Paul Trible for Senate Advisory Committee; See attached list for contributions

(p.3) Political Affiliations and Activities (cont'd.)

1979		
Larry Pratt for Delegate	$15.00	4/25
Friends of John Buckley	15.00	5/10
Friends of John Buckley	50.00	8/30
Jane Waggoner for House	10.00	10/26
Friends of John Buckley	35.00	10/29
Davis for Supervisor	25.00	10/29
1980		
Republican National Hispanic Assembly of Virginia	30.00	3/21
Colonial Republican Women's Club	15.00	10/4
Friends of Frank Wolf	100.00	10/23
Fairfax County Republican Ball	25.00	10/23
Bob Dornan in 1980	25.00	10/28
Stan Parris for Congress	50.00	10/28
Fairfax County Republican Ball	50.00	11/6
1981		
Tenth District Republican Comm,	10.00	1/11
The (Guy) Farley Committee	75.00	1/29
Fairfax County Republican Comm.	10.00	2/3
Fairfax County Republican Comm.	10.00	3/12
Fairfax County Republican Comm	10.00	3/12
Re-elect Delegate Buckley Comm.	25.00	3/20
Fairfax County Republican Comm	20.00	4/30
Fairfax County Republican Comm	20.00	4/30
Republican National Hispanic Assembly of Virginia	25.00	5/1
Kathy Royce for Treasurer	20.00	5/20
Bill Hurd for Delegate	20.00	6/1
Wyatt Durrette for Attorney General	25.00	6/1
Republican Party of Virginia	35.00	6/2
8th District Repubican Comm.	15.00	6/8
Re-elect John Buckley	30.00	6/24
Friends of Marshall Coleman	50.00	7/8
Bob Eberle for Congress	25.00	8/4
The Farley Comm.	25.00	8/12
Larry Pratt for Delegate	25.00	8/12
Friends of Marshall Coleman	25.00	8/27
John Dalton Reception (Fairfax County Republican Committee)	50.00	9/23
Larry Pratt for Delegate	25.00	9/25
Wyatt Durrette Reception	15.00	9/25
Ben Partin for Delegate Comm.	25.00	9/28
Frank Medico for Delegate Comm.	25.00	9/28
Gwen Cody for Delegate Comm.	25.00	9/28
Bill Beeton for Delegate	15.00	10/19
1982		
Parris for Congress	25.00	2/19
Fairfax County Republican Comm.	10.00	3/12
Fairfax County Republican Comm.	10.00	3/12
Fairfax County Republican Comm.	10.00	3/12

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

No

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

Not Applicable

3. Has a commitment been made to you for employment after you leave Federal service?

Not Applicable

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conficts of interest with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

Registered lobbyist for March of Dimes Birth Defects Foundation, and the Alliance of Third-Class Nonprofit Mailers; work to obtain full funding of continuing and phasing appropriations of revenue foregone funds to the United States Postal Service; secondary work on legislation to reform the Postal Reorganization Act of 1970, and bills relating to costing methodology and the private express statutes. Although my own work is now in a support capacity, I continue to be registered.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

Not Applicable

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: PARAS (LAST) GEORGE (FIRST) E. (OTHER)

Position to which nominated: Director, Legal Services Corporat **Date of nomination:**

Date of birth: 15 (DAY) 5 (MONTH) 24 (YEAR) **Place of birth:** Sacramento, California

Marital status: married **Full name of spouse:** Mary T. Paras

Name and ages of children:

Jason George Paras	29	
Danae Amelia Paras	23	

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Sacramento High School	1938-41	Diploma	June 1941
Sacramento Jr. College	1941-43	A.A.	June 1943
Univ. of Cal., Berkeley	1946-47	A.B.	June 1947
Stanford Univ.	1947-50	L.L.B.	June 1950

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

None

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
Washington Lodge #20,F & AM	None	1961-Present
Zionists of America	None	1978-Present
American Bar Assn.	None	1960-1972
Sacramento Bar Assn.	Secretary	1953-Present
California Bar Assn.	None	1950-Present
California Judges' Assn.	None	1970-Present
Del Paso Country Club	None	1975-Present
Martin Bros. Farms	Director	1977-Present

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

1. Hession, Robb & Creedon, law firm, San Mateo, Calif, Lawyer, June 1950 to December 1952
2. U.S. Army, First Lieutenant, Ft. Devens, Mass. and Carlisle Barracks, PA., December 1950 to June 1952
3. Self employed, private law practice, Sacramento, Calif., January 1953 to December 1956
4. Partner in Rowland & Paras (& successor law firm), January 1957 to December 1969, Sacramento, CA
5. Judge, Superior Court, Sacramanto, Calif., January 1970 to June 1874, employed jointly State of California and County of Sacramento
6. Justice, Court of Appeal, Third Appellate District, Sacramento, Calif., June 1974 to August 1981
7. Partner, Greve, Clifford, Diepenbrock & Paras, Sacramento, Calif., law firm, August 1981 to Present

***Government experience:** List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

None

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

1. Stanford Law Review, Volume 1 (1949), Case Note "ASCAP Monopoly Violates Anti-Trust Act."
2. Numerous legal opinions published in official California Appellate Reports, Third Series (too numerous and varied to specify.
3. Janes, Paras & Shapiro: "The Appellate Settlement Conference in Sacramento" (1981) 56 Cal. State B.J. 110

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

1. Democratic Party - no office or financial contribution.
2. Minor contributions (not over $100) to miscellaneous political candidates for state or municipal office - aggregate sum in past five years cannot exceed $500.00.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

No

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

Not applicable

3. Has a commitment been made to you for employment after you leave Federal service?

No

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

None

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

Not applicable. Obviously however I would never participate in any official decision involving any suggestion of conflict.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: Dana, Jr. (LAST) Howard (FIRST) Hinkley (OTHER)

Position to which nominated: Director, Legal Services Corp. **Date of nomination:** 12-30-81

Date of birth: 28 (DAY) 9 (MONTH) 40 (YEAR) **Place of birth:** Portland, Maine

Marital status: Married **Full name of spouse:** Susan Brown Dana

Name and ages of children:

John Carleton	age 16
Thomas Hale	age 13
Matthew Pickard	age 11

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Bowdoin College	'58-'62	A.B.	1962
Cornell Grad. School	'62-'66	M.P.A.	1966
Cornell Law School	'63-'66	LL.B.	1966

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Phi Kappa Phi - Cornell Grad. School of Business & Public Adm.

Order of the Coif - Cornell Law School

Editor - Cornell Law Quarterly

Cum Laude - Bowdoin A.B.

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
See Schedule attached		

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

See Schedule attached

MEMBERSHIPS

SCHEDULE

HOWARD H. DANA, JR. (BUSINESS)

Verrill & Dana Two Canal Plaza Portland, ME 04112	Law Partnership HHD-Partner
Verrill & Dana Associates Two Canal Plaza Portland, ME 04112	Real Estate Partnership HHD-Partner
J. B. Brown & Sons 482 Congress Street Portland, ME 04112	Real Estate Corporation HHD-Secretary-Director Stockholder
Fore River Warehouse & Storage Co. Inc. 482 Congress Street Portland, ME 04112	Corporation Business HHD-Secretary-Director Stockholder
Whitehead Associates 30 Exchange Street Portland, ME 04101	Real Estate Partnership HHD-Limited Partner
Knox Broadcasting Company Rockland, ME	Corporation-Radio Station HHD-Secretary-Director
Brownco Realty Co. 482 Congress Street Portland, ME	(wholly owned sub of J. B. Brown & Sons
Atbro Corp. Two Canal Plaza Portland, ME 04112	(half owned by Brownco Realty Co.)
Merrill Bankshares Company Bangor, ME	Stockholder
Chemical Fund, Inc. 61 Broadway New York, NY 10006	Stockholder
Arcata Corporation San Francisco, CA	Stockholder
Estate of Howard H. Dana Died October 29, 1981	Executor

HOWARD H. DANA, JR. (NON-BUSINESS)

Westbrook College Stevens Avenue Portland, ME	HHD-Trustee
Portland School of Art Spring Street Portland, ME	HHD-Trustee & Vice Chairman of Board
State Street Church State Street Portland, ME	HHD-Trustee (former)
Cushing Island Associates Cushing Island Portland, ME	HHD-Member & Vice President
Portland Country Club Route 88 Falmouth, ME 04105	Member
Mill Reef Club Antigua British West Indies	Member
Cumberland County Bar Association	Member
Maine State Bar Assn.	Member
The Bar of Maine	Member
The American Bar Assn.	Member
American Trial Lawyers Assn.	Member

SUSAN BROWN DANA (BUSINESS) (HHD's Wife)

Sudan, Inc. 13 Exchange Street Portland, ME 04112	SBD-Officer, Director, Stockholder
Knox Broadcasting Company Rockland, ME	SBD-Stockholder
The Island Company Cushings Island Portland, ME	Stockholder

SUSAN BROWN DANA (NON-BUSINESS)

Portland Symphony Orchestra Portland, ME	Trustee
Portland Boys Club Portland, ME	Trustee
Catharine Morrill Day Nursery Portland, ME	Former Trustee Former President
Intown Portland Exchange Portland, ME	Director
Old Port Exchange Assn. Portland, ME	Former Director

JOHN CARLETON DANA (HHD's Son)

Knox Broadcasting Co. Rockland, ME	Stockholder
Merrill Bankshares Company Bangor, ME	Stockholder
Arcata Corp. San Francisco, CA	Stockholder
Standard Oil of New Jersey	Stockholder
Chase Manhattan Bank New York, NY	Stockholder
Tucker Anthony Cash Management Fund New York, NY	Stockholder

THOMAS HALE DANA	(HHD's Son)
Knox Broadcasting Co. Rockland, ME	Stockholder
Central Maine Power Co. Augusta, ME	Stockholder
John Hancock Investors, Inc.	Stockholder
Royald Dutch Petroleum Company	Stockholder
Tucker Anthony Cash Management Fund New York, NY	Stockholder
Burlington Northern	Stockholder

MATTHEW PICKARD DANA	(HHD's Son)
Knox Broadcasting Co. Rockland, ME	Stockholder
Tucker Anthony Cash Management Fund New York, NY	Stockholder

EMPLOYMENT RECORD

SCHEDULE

FROM	TO	NAME OF EMPLOYER	ADDRESS (where employed)	TYPE OF WORK	REASON FOR LEAVING
9-67	Date	Verrili & Dana	Portland, Maine	lawyer	current
8-67	8-67	Unemployed	vacation		
9-66	7-67	United States Court Hon., Edward T. Gignoux	Courthouse Portland, Maine	Law clerk	one year term
6-66	8-66	Verrill & Dana	Portland, Maine	Summar law clerk	to assume clerkship
9-65	6-66	Unemployed		Law Student	
6-65	8-65	Verrill & Dana	Portland, Maine	Summar Law clerk	to return school
9-64	6-65	Unemployed		Law Student	
6-64	8-64	* WTVL Radio Station Carleton Brown (Father-in-Law)	Waterville, Maine	Cataloging Records	to return school
		* Lincoln Library	Boston, MA	Salesman	to return school
		* PAR	Providence, RI	Speed Reading School	to return school
		* Weeks Hutchins & Frye --Brad Hutchins	Waterville, ME	Law Clerk	to return school
		* Republican National Com.	Washington, D.C.	Asst. Doorkeeper	to return school
9-63	6-64	Unemployed		Law Student	
6-63	8-63	Sebasco Lodge Harriet Delaware	Sebasco, ME	Asst. Maitre D'	Return to school
9-62	6-63	Unemployed student-Cornell			
6-62	9-62	Sebasco Lodge Harriet Delaware	Sebasco, ME	Asst. Maitre D'	to return school
9-61	6-62	Unemployed student-Bowdoin			

EMPLOYMENT RECORD (cont.)

SCHEDULE (cont.)

6-61	8-61	Rhode Island Country Club-Howard H. Dana, Sr.	Barrington, RI	Tennis Pro	to return
9-60	6-61	Unemployed student-Bowdoin			
6-60	9-60	Spruce Point Inn --John Druce	Boothbay Harbor, ME	life guard	to return school
9-59	6-60	Unemployed student-Bowdoin			
6-59	9-59	Spruce Point Inn --John Druce	Boothbay Harbor, ME	Busboy	to return school
9-58	6-59	Unemployed student-Bowdoin			
7-58	8-58	?	Fitchburg, MA	Camp counselor	Camp over
9-57	6-58	Unemployed student-Moses Brown School			
6-57	8-57	Lincoln Library --Howard Dana, Sr.	Boston, MA	Encyclopedia Salesman	Vacation
9-56	6-57	Unemployed student-Moses Brown School			
6-56	8-57	Lincoln Library --Howard Dana, Sr.	Boston, MA	Encyclopedia Salesman	Vacation
9-55	6-55	Enemployed student-Moses Brown School			

prior to this time I had various lawn mowing jobs for relatives and neighbors and also occasionally worked as a paperboy.

Government experience:

List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

Cape Elizabeth School Board - member 1976 to date

Chairman 1981 to date

Published writings:

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

Note, Cornell Law Quarterly, Vol. 51, p.551

Note, Cornell Law Quarterly, Vol. 51, p. 837

Political affiliations and activities:

List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

See Schedule

POLITICAL AFFILIATIONS AND ACTIVITIES

SCHEDULE

1972-1978	Member -- Maine Republican State Committee
1975-1978	Chairman -- Executive Committee of the Maine Republican State Committee
1976-1982	Chairman -- Cape Elizabeth Republican Town Committee
1978-1980	Delegate -- Maine Republican State Convention
1979-1980	Chairman -- Reagan for President Committee (Maine)
1980	Chairman -- Reagan-Bush Committee (Maine)
1980-1981	Coordinator for Maine Inaugural Committee
1980-1981	Chairman, Maine Patronage Committee
1981-present	Finance Chairman, Citizens for Emery

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

No

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

See above

3. Has a commitment been made to you for employment after you leave Federal service?

No, see above

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

My law firm represents clients occasionally in proceedings in which another party is represented by a lawyer employed by a recipient of the Legal Services Corporation.

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None that I can recall

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

None that I can recall

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

If appropriate I will refrain from voting on any matter that would be considered a conflict.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: Stubbs, II (LAST) Robert (FIRST) Sherwood (OTHER)

Position to which nominated: Member, Legal Services Corporation Board Date of nomination:

Date of birth: 11 (DAY) - 11 (MONTH) - 22 (YEAR) Place of birth: St. Louis, Mo.

Marital status: married Full name of spouse: Kipling Louise McVay

Name and ages of children: Robert Sherwood Stubbs III 34
Anna Lucille Stubbs Gillis 31

Education:	Institution	Dates attended	Degrees received	Dates of degrees
Undergraduate	JohnsHopkins University	1939-41	(No degree)	
	University of Alabama	1941-42	A. B.	1942
Law:	George Washington Univ.	1949-52	J. D. (With distinction)	1952
Graduate:	East Carolina College	1959-62	(No Degree)	
Military:	Officers Communication Course	1944	n/a	
	Instructors Orientation	1952	n/a	
	Military Government	1953	n/a	
	Naval Justice Course	1955	n/a	
	Amphibious Warfare (Jr. and Sr.)	1958	n/a	
	Military Justice	1960	n/a	

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Letter of Commendation, Presidential Unit Citation, Navy Unit Citation, American Campaign Medal, Asia-Pacific Campaign Medal, World War II Victory Medal, China Service Medal, National Defense Service Medal.

Held Woodyear Scholarship at Hopkins.

Honorary societies: Order of the Coif(law scholastic), Order of the Arrow (Scouting), Omicron Delta Kappa (leadership), Pi Delta Epsilon (Journalism), Tudor and Stuart Society (literary), Georgia Gridiron Society (leadership).

Other honors:Certificate of Litberary Merit(Judge Advocate General of the Navy award).

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
	n/a	

Supreme Court of Alabama (1952); U. S. District Court for the District of Columbia (1952); U. S. Court of Appeals for the District of Columbia Circuit (1952); U. S. Court of Military Appeals (1953); U. S. District Court for the District of Hawaii (1957); U. S. Supreme Court (1961); Superior Courts of Georgia (1968); Supreme Court of Georgia (1972); Court of Appeals of Georgia (1972); U. S. District Court for the Northern District of Georgia (1973); U. S. Court of Appeals for the Fifth Circuit (1973) and the Eleventh Circuit(1981). State Bar of Georgia, American Bar Ass'n, Blue Ridge Circuit Bar Ass'n, Decatur-DeKalb Bar Ass'n, Atlanta Bar Ass'n, Canton Bar Ass'n, Lawyers Club of Atlanta, American Judicature Society, Kappa Alpha Order, Phi Delta Phi Legal Fraternity, Retired Officers Association, Lake Arrowhead Home Owners and Property Owners Ass'ns.

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

1973-Present State of Georgia (Executive Assistant Attorney General). Principal assistant to the Attorney General, exercising management responsibility for more than sixty attorneys handling more than 16,000 cases annually in representing the State of Georgia in all legal matters. The Office of the Attorney General includes more than 110 persons in seven substantive law divisions, an administrative division, and the State Library, and has an annual budget of $3.5 million.

1963-73 Emory University (Professor of Law).

1942-1962 U. S. Marine Corps (retired as Lieutenant Colonel). Non-legal assignments, 1942-1949. Legal assignments, 1949-62. Revived courts-martial and administrative board proceedings, drafted legislation and served as legal assistant to the intermediate military appellate court while in the Office of the Judge Advocate General of the Navy, 1949-1952. Resident instructor, Marine Corps Schools, 1952-1955. Legal advisor for major military commands, prosecuting and defense counsel and trial judge in courts-martial legal assistance, and review of courts-martial, administrative boards, and tort claims against the United States, 1955-1959. Principal legal advisor for the commander of Camp Lejeune, North Carolina, a major base of some 175 square miles housing and employing 65,000 person, 1959-1962. Also served as circuit trial judge for major Marine Corps trials in Southeastern United States, 1960-62.

Government experience:

List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

1962 until Present (for further information on dates, please refer to attached resume)

Indigent Accused Person Project, American Bar Foundation; Legal Panel, GA Council on Crime and Delinquency, Misdemeanant Study Committee; Special Consultant, Committee on Assistance to Indigent Criminal Defendant; GA Trial Conference; A. B. A. Committee on Legal Aid; So. Reg. Education Board; GA Juv. Court Law Study; Criminal Justice Committee, State Bar; GA. Family and Children Services Consultant; GA Council on Crime and Delinquency; Atlanta Region Metropolitan Planning Comm; GA State Depart. of Education; GA Bar Committee on Law Schools; Metro. Atlanta Comm. on Crime and Delinquency; Depart. of Human Resources Consultant; Governor's Comm. on Judicial Processes; GA Criminal Law Study Committee; Governor's Comm. on Court Organization; State Bar Committee on the Judicial Article, and Revision; State Code Revision Comm.

Published writings:

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

Please see attached resume for more listings of books, monographs, encyclopedia topics, articles and papers.

Among others: Governmental Ethics and Conflicts of Interest in Georgia (with Kipling L. McVay) (Michie Co., Charlottesville: 1980)
Powers and Limits of State Government Under Georgia Law (Institute of Government, Athens: 1980)
The Social Caseworker in Georgia Juvenile Courts (with Lucy S. Henritze) (Emory University, Atlanta: 1972)
Georgia Law of Children (Michie Co., Charlottesville: 1969)
Marriage and Divorce in Georgia (Emory University, Atlanta: 1964)

Political affiliations and activities:

List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

Contributions to Norman Underwood (1980 candidate for U.S. Senate from Georgia), George T. Smith (1980 candidate for Supreme Court of Georgia.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

No, this is not required.

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

n/a

3. Has a commitment been made to you for employment after you leave Federal service?

n/a

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None to my knowledge. (My office as Executive Assistant
Attorney General of Georgia may seem to be a conflict but
past opinion is that it is not.)

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None to my knowledge.

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None to my knowledge.

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

None.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

n/a

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: DeMoss (LAST) Harold (FIRST) R. Jr. (OTHER)

Position to which nominated: Board of Directors Legal Services Corporation

Date of nomination: Jan. 22, 1982

Date of birth: 30 (DAY) Dec (MONTH) 1930 (YEAR)

Place of birth: Houston, Texas

Marital status: Married

Full name of spouse: Judith Carter Phelps DeMoss

Name and ages of children: Harold R. III Born Nov. 24, 1956
Louise Holland Born Sept. 24, 1961

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Rice University	'48-'52	BA	May 1952
Univ. of Texas	'52-'55	LLB	Jan. 1955

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

None

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
AMERICAN BAR ASSN		1958 - PRESENT
TEXAS BAR ASSN	GRIEVANCE COMMITTEE	1957 - PRESENT
HOUSTON BAR ASSN	1st. V.P. + DIRECTOR	1957 - PRESENT
Amigos de las Americas	DIRECTOR	1976 - 1978
RETINA RESEARCH FDN	DIRECTOR	1979 - 1980
TEXAS BILL of RIGHTS FDN.	DIR. + Ch. of Bd	1968 - 1972
HOUSTON RACQUET CLUB		1969 - present
~~Houston Athletic Club~~		~~1968 - present~~

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

1955 - 1957 U.S. ARMY

1957 - PRESENT BRACEWELL + PATTERSON, HOUSTON TEXAS, ASSOCIATE AND PARTNER in civil practice of LAW

Government experience:

List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

MEMBER, BOARD OF DIRECTORS, PANAMA CANAL COMPANY (1976-1977)

Published writings:

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

NONE

Political affiliations and activities:

List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

Co-Chairman for Harris County, Texas, Reagan for President 1980

Chairman for Texas, Bush for President Primary Campaign 1979-80

Co Chairman for Harris County, Ford for President Campaign 1976

National Convention Delegate, Republican Natl Convention July 1980

Co-Chairman for Harris County, Tower Senate Campaign 1978

Contributor to Republican National Committee, Texas Republican Party, Harris County Republican Party, Associated Republicans of Texas and numerous Republican local candidates

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

NO

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

N/A

3. Has a commitment been made to you for employment after you leave Federal service?

N/A

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

YES

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

NONE

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conficts of interest with the position to which you have been nominated.

NONE

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

NONE

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

NONE

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

N/A

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: Sandstrom (LAST) Marc (FIRST) Warren (OTHER)

Position to which nominated: Director/Legal Services Corporation

Date of nomination: 3/1/82

Date of birth: 24 (DAY) 2 (MONTH) 1935 (YEAR)

Place of birth: Chicago, Illinois

Marital status: Married

Full name of spouse: Ann Sandstrom

Name and ages of children:

Bret	24	Kerri	12
Brad	20		
Scot	16		

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Stanford University	1952-1958	BA, LLB	1956, 1958
South Pasadena, San Marino High School	1949-1952		

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

None

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
California Law Revision Commission	Director/Chairman	1970-1078
San Diego Transit Corporation	Director/Chairman	1972-198
San Diego Hospital Association	Director	1972-Present
Sharp Cabrillo Hospital	Director	1981-Present
Rest Haven Preventorium for Children	Director	1977-Present
World Affairs Council	Director	1977-Present
* See attached schedule A		

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

1958-1964 - Trial Attorney - California Department of Transportation
1120 N St., Sacramento, California

1964 - Attorney - Hardy Carley & Love
485 Hamilton Avenue, Palo Alto, California

1964-1967 - Trial Attorney - California Department of Transportation
1120 N St., Sacramento, California

1967-1970 - Assistant Secretary - Business and Transportation
1120 N St., Sacramento, California

1970-Present - General Counsel and now Executive Vice President -
San Diego Federal Savings and Loan Association, now
known as Great American Federal Savings and Loan
Association, 600 B Street, San Diego, California

1970-Present - Officer/Director -*Financial Scene Incorporated -
1323 6th. Ave., San Diego, California

1970-Present - Officer/Director -*California General Mortgage Service, Inc., 600 B Street, San Diego, California

1970-Present - Officer/Director -*San Diego Federated Insurance Agency, Inc. - 600 B Street, San Diego, California

1974-Present - Officer/Director*Franklin Group Ltd. - 600 B Street, San Diego, California

* Wholly owned subsidiary of Great American Federal Savings and Loan Association

SCHEDULE -A-

Sharp Hospital Advisory Council	Past Chairman (1974-1976)
Vista Hill Foundation	Member (1978-1982)
California State Bar Association	Member
San Diego County Bar Association	Member
California Savings and Loan League Attorneys Committee	Member

Government experience:

List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

None other than listed above under memberships

Published writings:

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

Coauthor chapter on Condemnation proceedings in book entitled Acquisition For Right of Way published in 1962 by American Association of State Highway Officials.

Political affiliations and activities:

List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

Republican Associates of San Diego. (1973 or 1974)

See attached schedule B

CONTRIBUTION SCHEDULE -B-

1977

Pete Wilson for Governor	$250.00
Bill Lowery for Council	50.00
Jerry Patterson for Congress	100.00

1978

Terry Knoepp for Assembly	$ 25.00
Friends of Terry Knoepp	100.00
Tom Gade for City Council	25.00
George Deukmejian for Attny. General	150.00
George Deukmejian for Attny. General	100.00

1979

Lucy Killea for Council	$100.00
Reagan for President	100.00
Steve Wittman for Council	150.00
Pete Wilson for Governor	30.00
Reagan for President	400.00
Larry Stirling for Assembly	50.00

1980

Dan McKinnon for Congress	$100.00
President-Inauguration Committee	500.00
California Republican Party	25.00

1981

Congressman Patterson Election Committee	$100.00
Congressman Lowery Committee	125.00
Congressman Duncan Hunter Committee	125.00

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

No

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

Not applicable

3. Has a commitment been made to you for employment after you leave Federal service?

Not applicable

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

None

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

None

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: Earl (LAST) William (FIRST) Louis (OTHER)

Position to which nominated: Director, Legal Services Corporation **Date of nomination:**

Date of birth: 11 (DAY) July (MONTH) 1943 (YEAR) **Place of birth:** New York City, New York

Marital status: Divorced **Full name of spouse:**

Name and ages of children:
Christine A. K. Earl (10)
Grant W. K. Earl (5)

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Hanover Park High School	1957 to 1961	H.S. Diploma	1961
Fairleigh Dickinson University	1965 to 1969	B.S.	1969
University of Florida	1969 to 1971	J.D.	1971

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Recipient, University of Florida Tuition Waiver Scholarship
Recipient, University of Florida Law Center Ass'n Scholarship
U.S. Marine Corps National Defense Medal; Good Conduct Medal
Elected, Executive Editor, University of Florida Law Review
Lecturer, American Bar Association Seminars
Lecturer, Florida Bar Association CLE Seminars

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
American Bar Association	Member	1973 to present
District of Columbia Bar	Member	1977 to present
Florida Bar Association	Member	1972 to present
Izaak Walton League of America	Member	1980 to present
University Club (Social); Grove Isles Club (Social); Bankers Club (social)		1976 to present
Hillsborough Environmental Coalition	Member	1979 to present
Environmental Defense Fund	Member	1978 to present

See Item 1. on attached sheet for Court Admissions

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

July, 1975 to Present	Peeples, Earl, Moore & Blank, P.A. Suite 3636, One Biscayne Tower Miami, Florida 33131	Attorney-Vice-Pres.
July, 1972 to June, 1975	The Deltona Corporation 3250 S.W. Third Avenue Miami, Florida 33129	Attorney
Feb., 1971 to June, 1972	Eastern Water Law Center Holland Law School Gainesville, Florida	Legal Research

Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

Special Environmental Counsel for Manatee County, Florida

Special Counsel for Hillsborough County, Florida (Land-Use)

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

A Comprehensive Class Action Bibliography, 4 Class Action Reporter (1975)

Comment, Criminal Law: Crowded Dockets No Longer Justify Denial of Speedy Trial, 23 University of Florida Law Review 603 (1971)

Environmental Land Use Controls: Existing Limits Unclear and Future Hopes Uncertain, 50 Florida Bar Journal 563 (1976)

Is Navagability the Best Criterion for Protecting Freshwater Lakes? 48 Florida Bar Journal 518 (1974)

Note, The Rulemaking Power of the Florida Supreme Court, 24 University of Florida Law Review 87 (1971)

PLEASE SEE Item 2 on attached sheet for Continuation

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

a. No offices or memberships

b. No recent contributions; presently reviewing old checking account records for any contributions

SUPPLEMENTAL INFORMATION

Item No. 1

Court	Date Admitted
United States Supreme Court	February 28, 1977
United States Court of Appeals, 5th Circuit	October 1, 1981
United States Court of Appeals, 11th Circuit	October 1, 1981
United States Court of Claims	January 12, 1979
District of Columbia Court of Appeals	August 10, 1977
Florida Supreme Court	April 24, 1972
United States District Court, Southern District of Florida	October 26, 1972
United States District Court, Middle District of Florida	January 11, 1977

Item No. 2

Streamlining Development Review Under the Environmental Land & Water Management Act, 35 University of Miami Law Review (Spring, 1982)

Discovery in Land-Use Litigation (ABA Land-Use Publication) Land Use Litigation Seminar (1982)

Environmental Law in Florida: Present State & Federal Developments, 33 University of Miami Law Review 1015 (1979)

The Florida Industrial Siting Act of 1979, Environmental Regulation & Litigation in Florida (1981)

The Water Use Permitting Process; Representing the Applicant and Working with Experts, Environmental Law Section Seminar (1980)

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Not applicable. The position for which I have been nominated is Director of Legal Services Corporation

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

Not applicable.

3. Has a commitment been made to you for employment after you leave Federal service?

Not applicable.

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes.

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None known.

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None known.

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None known.

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

a. No legislative lobbying at the federal level.

b. In 1981 and 1982, on behalf of agricultural clients, I have written letters urging the Department of the Army to make its application of Section 404 navigable waters regulatory jurisdiction fairer and more timely. (a copy of my letter is attached)

c. No other lobbying.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

None known.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: McKee (LAST) Clarence (FIRST) Vanzant (Middle) (OTHER)

Position to which nominated: Legal Services Corporation-Board **Date of nomination:**

Date of birth: 16 (DAY) 11 (MONTH) 42 (YEAR) **Place of birth:** Buffalo, New York

Marital status: Married(3 yrs) **Full name of spouse:** Jean DeForest McKee

Name and ages of children: Robin 13 (stepdaughter)

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Wheatland-Chili Central School District	1949-1976	N.Y. Regents Diploma	1961
Hobart College	1961-1965	B.A.	June 1965
Howard University School of Law	1965-67; 1971-72	J.D.	June 1972

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

American Legion and Veterans of Foreign Wars Awards for Citizenship;Hobart College Academic Scholarship;Outstanding Achievement in International Law Award; American Jurisprudence Award for Outstanding Achievement in Constitutional Law, Remedies, Criminal Procedure;Outstanding Young Men of America Award; Outstanding Alumni Public Service Award--Wheatland-Chili Central School and Hobart College; United Way Community Service Award; Distinguished Achievement In Law and Public Service Award; Howard University School of Law 3/82.

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
District of Columbia Republican State Committee	elected member	1980-present
National Communications Club	Director & Pres.	1980-82 (Pres)(Dir)
National Lawyers Club	Member	1979-present
American Bar Association	Member	1979-80
Washington Bar Association	Member	1981-present
Unified Bar of the District of Columbia	Member	1972-present
U.S.O. of Washington	Director	1980-82
WETA-Board of Trustees	Trustee	1980-82
United Way of D.C.	Director	1971-81
R.S. Productions Inc.	Director	1980-82

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

1965-66 Neighborhood Legal Services Office, United Planning Organization, Washington, D.C.-Worked assisting Legal Service Attorneys as Law Student at neighborhood legal office in Washington during 1st year of law school.

1966-67 Compliance Officer, Department Health Education and Welfare, Wash.DC-investigated health facilities for compliance with 1964 Civil Rights Act in Alabama, Mississippi, Missouri, and Massachusetts.;Legislative Assistant for Congressman Frank Horton(R-NY); Consultant to National Medical Assoc.; Radio/TV Announcer, WOOK, Washington, D.C.

1967-68 West Coast Coordinator, President's Council on Youth Opportunity, Wash. D.C., coordinated summer job programs for disadvantaged youth in 7 West Coast Cities with Mayors, Governors, businessmen, for Council Chairman, the Vice President of the United States (Hubert Humphrey);

1969-71 Professional Staff Member for the Minority, U.S. Senate Select Committee on Nutrition and Human Needs, appointed by Senator Jacob K. Javits to assist in drafting and developing legislation regarding food stamps, school lunch and domestic food programs, worked with Legal Services attorneys in Florida and California in investigating problems of migratory laborers and food stamp programs;

1971-72 Professional Staff Member for the Minority/Minority Counsel, U.S. Senate Committee on the District of Columbia, appointed by Senator Charles Mac Mathias to work on matters related criminal justice, judicial reform and home rule for the District of Columbia;

1972-(Oct-Dec) Acting Director, Office of Congressional and Community Affairs U.S. Civil Aeronautics Board, Washington, D.C.

1973-75 Deputy Chief, Industry EEO Unit, Office of General Counsel, Federal Communications Commission-assisted in developing and drafting affirmative action guidelines for broadcast industry;

1975-77 Legal Assistant to Federal Communications Commissioners Benjamin Hooks and Tyrone Brown-provided legal advice and assistance to Commissioners on communications issues;

1978-80 Private practice of Law-Law, Murphy & McKee-Washington, D.C.

1980-Present-Of Counsel-Pepper and Corazzini, Washington, D.C. Communications Law Firm

Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

1980-Office of the President-Elect--Team Leader for the Federal Home Loan Bank Board Transition Team during President Reagan's Transition

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

"Commentary on the Chinese Peoples Procuratorates, 7 Journal of Internal Law and Economics (George Washington University, National Law Center publication), (1972)

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

1979-80--REAGAN FOR PRESIDENT COMMITTEE--$1,000 campaign contribution; Finance Chairman, D.C. Reagan For President Finance Committee; Surrogate Speaker Domestic Affairs Advisor

1980-REAGAN-BUSH COMMITTEE--Domestic Affairs Advisor, Administration of Justice Task Force; Advance Man

1980-COMMITTEE TO RE-BUILD THE DISTRICT OF COLUMBIA REPUBLICAN PARTY, Candidate for State Committee (elected in November 1980) $250 contribution to Committee

1980-COMMITTEE FOR THE REPUBLIC--Assisted in Fundraiser

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

NO

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

NOT APPLICABLE SINCE THE POSITION DOES NOT REQUIRE DISCONTINUING PRESENT EMPLOYMENT RESPONSIBILITIES

3. Has a commitment been made to you for employment after you leave Federal service?

NO

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

YES

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

NONE

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

NONE

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

NONE

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

NONE

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

NOT APPLICABLE

Mr. Chairman:

Mr. Robert S. Stubbs II has served the state of Georgia with distinction as Executive Assistant Attorney General. For many years, Mr. Stubbs served as the top assistant to Georgia Attorney General Arthur Bolton and he has continued in that position under the new Attorney General Michael J. Bowers.

I believe Mr. Stubbs to be well qualified to serve on the Board of Directors of the Legal Services Corporation. He was the principal author of the Indigent Defense Act in Georgia and has always worked to see that the poor were protected by our state's laws and well represented in our courts.

Mack Mattingly

U.S.S.

STATEMENT OF

ROBERT S. STUBBS II, ESQ.

Mr. Chairman, Members of the Committee:

I am Robert Stubbs, a nominee of the President to be a member of the Board of Directors of the Legal Services Corporation.

With your permission, and at least at your implied request, I would like to make a few comments in respect to my fitness to hold the position for which I have been nominated, especially in view of remarks of others which ascribe to me an impermissible conflict of interest because of my office as Executive Assistant Attorney General of Georgia. If these hearings had been much more delayed, this objection would be mooted out as my present plan is to leave that office in June, 1983.

I would first like to note that there is a "common law" respecting the appointment of one who is an assistant to a State attorney general. Admittedly I am the senior assistant in my State. I serve, however, entirely at the pleasure of the Attorney General who, in Georgia, is the only partner in our law firm of 62 attorneys. Be that as it may, this Committee has, in the past, approved the nomination of an assistant attorney general as a member of the Board of Dirctors of the Legal Services Corporation. It has also approved the nomination of the wife of an Attorney General. I suspect she was a great deal closer to her attorney general than I am to mine!

I do not know if other nominees have held a State office comparable to mine. I would point out, however, that the Congress itself in the Intergovernmental Cooperation Act of 1968 and in the Intergovernmental Personnel Act of 1970 has sought to encourage the participation by State officers and employees in the activities of the Federal Government and those funded by the Congress. It has found a valid public purpose to be served by such interchange, especially in the benefit to Federal and State activities alike from the differing experiences and perspectives brought to issues of common concern. I suggest that my presence on the Board of Directors of the Legal Services Corporation will not be a sinister one but rather will enhance the range of experience of the Directors and will perhaps offer a different perspective in best resolving the problems we face in reaching the goals stated by the Congress.

One may reasonably infer from some of the comments concerning my appointment that the commentators view government as opposed to the interests of the people and that its counsel is thus cast in an adversarial posture to the people. I do not subscribe to that view at all, albeit I am conscious of the fact that some in government may act arbitrarily, capriciously, or in some other improper way. I do not know the frame of reference of others. I do know what my own office is and has been, at least during the nine and more years during which I have been associated with it. We are bound by the Constitutions and laws of the United States and of Georgia and, to the best of our ability, we have sought their due execution. All laws are not wise, however, and their defense may offend some of our citizens, but, until they are qualified or set aside by proper authority, it is the duty of the Attorney General to defend them. In this connection, I do not recall a single case in which my office has initiated litigation against a legal services activity. State agencies have been sued, and officers thereof, and we are duty bound to provide a defense. In my judgment, and to the extent that my experience leads me, we have dealt openhandedly and with mutual regard when legal services people have represented the complainants. I have sometimes thought the litigation to be unnecessary or unwarranted; at other times I have felt that a real public service was done by bringing the matter to a judicial resolution. So far as I know, and statements of legal services attorneys support my opinion, we have a sound and responsible working relationship. I know of no opposition to my nomination, at least on the grounds before you.

As a Director one is cast in the role of a fiduciary with duties to the one who has placed him in the role as well as to those for whom the relationship exists. An analogy to a trust is not inappropriate. The Congress is the settlor, acting in behalf of the people of the United States; the Board of Directors is the trustee; the people, generally, are the beneficiaries, directly if they qualify for the special services offered, less so if they do not. The people generally are nonetheless beneficiaries to whom the trustees owe their fiduciary duty. Further, the trustees owe a duty to the settlor, the Congress, to carry out the trust with due regard to the instructions given. If I am correct in my analogy, the mere fact that a trustee may disagree with a beneficiary or even reproach him in litigation will not breach the fiduciary relationship. The trustee must act in such a fashion as to defeat the trust, both in the sense of frustrating the purposes of the settlor as well as in denying to the beneficiary his legitimate interests under the trust. For a trustee to be disqualified to serve, it must appear that his hostility to the beneficiary will preclude the due execution of the trust. I know of nothing in my career, nor is there anything, to demonstrate a hostility to the purposes of the trust created by the Congress for the benefit of those so lacking in funds as to be unable to assert their legal rights. Quite to the contrary, I would invite you, Mr. Chairman, and the members of the Commiteee to review my record. I was a principal author of the indigent defense act in Georgia and of our juvenile court code. I have served on national and state committees dealing with the defense of indigents and with legal aid and assistance. As a faculty member, I was a trustee and director of one of the first school affiliated legal services centers in the United States. I have lectured and published and served as consultant in most of the areas now deemed appropriate for legal services.

The phrase "conflict of interest" has been loosely used in raising a question as to my fitness to serve as a Director. "Conflict of interest" is a term of art and means more than "he doesn't agree with me" or "he won't do what I think he should." In one respect, perhaps its more narrow application, it is a relationship proscribed by specific law; in its broader, common law sense it is rooted in trust law, which I have earlier discussed.

In Section 1005(c) of the Legal Services Corporation Act, the Congress has clearly defined a legal conflict of interest and has provided for the action to be taken should it arise.

> No member of the Board may participate in any decision, action or recommendation with respect to any matter which directly benefits such member or pertains specifically to any firm or organization with which such member is then associated or has been associated within a period of two years.

Mr. Chairman, I understand this provision, agree wholeheartedly with it, and would abide by it without reservation.

The broader, common law conflict of interest involves two elements in the transaction under scrutiny. Is there an opportunity for profit by the public officer arising out of the transaction? Does the officer exercise control over the situation? Other pertinent but subordinate questions inquire into the extent that the officer in question may be both master and servant to himself; is the office to be used for some personal advancement or pecuniary gain; and, is there promotion of another's personal interest at the expense of the public? While I may participate in matters which generally pertain to or affect a poor person in Georgia who may at some time in the uncertain future be counselled to litigate with a State agency which my office must under law defend, I submit that that transaction or eventuality brings me no gain or profit nor is it subject to any control by me alone or in substantial part as to its outcome.

Whatever may be a ground for denial of my appointment it is not "conflict of interest" as that term is used in the law. The directions of the statute itself are adequate to insure whatever insulation from the transaction that the Congress deems appropriate.

Mr. Chairman, through much of my youth and all of my adult life I have lived within the terms of oaths calling for duty, service, and loyalty. I have met the terms of those oaths at home and abroad and no shame or question has ever attended my performance of duty. I have taken an oath as a recess appointee of the Board of Directors of the Legal Services Corporation and have lived within its strictures. I know what it is to obey the law and it has never entered my mind to do otherwise.

I appreciate the opportunity you have given me to make this statement.

RESPONSES BY ROBERT S. STUBBS II
TO QUESTIONS PROPOUNDED
BY DEMOCRATIC MEMBERS OF THE
SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES

Q. 1. The Legal Services Corporation Act requires that no more than six members of the Corporation Board shall be of the same political party. Of what political persuasion are you?

A. I have been appointed as a Democrat. While Georgia does not register by parties, I have nonetheless voted in the Democratic primary for the past 20 years. I have never voted in a Republican primary.

Q. 2. What steps have you taken to acquaint yourself with programs funded by the Corporation? Have you personally visited legal services projects? If not, will you commit yourself to doing so?

A. I was already familiar with those in my own state. I have read about programs in other states and have corresponded and talked with representatives of programs elsewhere. Because of the circumstances attending my appointment and confirmation, I have not visited any projects. After confirmation, I plan to visit activities in each state in my region and representative activities, particularly those with specialized programs, in other states in the country.

Q. 3. What attempts have you made to acquaint yourself with the needs of eligible clients of the Legal Services Corporation?

A. My present exposure is through reading, correspondence and discussions with program and client representatives. I had previous personal contact concerning client needs in the predecessor program to this one, which I helped establish at Emory University.

Q. 4. As you know, the funding level for the Corporation was reduced by 25 percent from FY 1981 to FY 1982 -- from $321 million to $241 million. The Corporation has requested a budget of $265 million for FY 1983. Is the amount appropriated for FY 1982 adequate to meet the need for legal services for the poor? Would the Corporation request of $265 million for FY 1983 be adequate to meet such need?

A. I do not know that an adequate inquiry into the needs has been made, or that the legal profession, the courts or the legislatures have considered the full range of alternatives for legal services, or that any overall fiscal evaluation of the costs of meeting the needs has been completed. The Board is now undertaking a fresh look at these issues. In the absence of evidence to the contrary, I must assume that the Congress has acted responsibly in its appropriation for legal services. Any request by the Legal Services Corporation would have to be considered a responsible estimate of its part in an overall effort to meet the perceived needs for legal services.

Q. 5. What savings in funds, if any, do you believe can be implemented by the Legal Services Corporation within the construct of the present Act? What savings, if any, do you believe could be achieved through statutory changes in the Act? Do you favor any such administrative or statutory changes?

Do you think that cost effectiveness theories dictate that some types of legal services attorneys' work be halted? If so, what types of work, and why?

A. The Congress has required the diversion of funds to stimulate further effort by the Bar and development of alternative, supportive and complementary methods of meeting the needs for legal services. By satisfying this directive, the Corporation can clearly contribute to savings in Federal funds without diminishing the quantum of services intended by the Congress. Management techniques may also [illegible] employed to streamline organization, supervise grantee performance and accounting more carefully, and improve the delivery of personnel services. I do not have any concrete proposals to make at this time, and such ideas as I may have should first be discussed with and considered by the Board. Accordingly, I do not have proposals now to favor. I would say, however, that if the Congress appropriates funds for legal services, the concern of the Board should not be so much on savings by not expending those funds as much as it should be on the most effective and efficient utilization of those funds, as required by the Congress.

I am not familiar with the "cost effectiveness theories" to which the question refers.

Q. 6. Do you favor restricting any areas of legal services attorneys' activities? If so, what kinds of restrictions do you favor, and on what basis?

A. I think the Board itself may restrict areas of legal services attorneys' activities to the extent that the same is consonant with the authority granted to it by the Congress, the terms and necessary implications of the Act, sound lawyer-like techniques, and the canons of professional ethics. I do not now propose specific restrictions but want to review existing regulations and practices to insure compatibility with the foregoing bases for any restrictions.

I have already communicated by letter some concerns to all of the other members of the Board, including Mrs. Worthy from the prior Board, for discussion and consideration.

Q. 7. Do you have any reservations regarding legal services attorneys becoming involved with suits against local or state governments, or the federal government? If so, please indicate the nature of your reservations.

A. Since the Congress has apparently authorized and countenanced this activity, it would not be appropriate to voice categorical opposition. Many segments of the public do express concern that the right and left hands are often in fists rather than open. If there are wrongs in the administration of legislative programs, then, it is said, the legislature itself should correct them rather than granting funds to an agency to do so in a judicial setting. Another comment is to the effect that governments are diverting funds to the defense of such actions which might better be employed broadly in the public interest. I have seen good come from such suits and I have had real doubts about the wisdom of others. In any event, I think the decision to litigate ought to be carefully reached after due consideration and exhaustion of other means to resolve the problem.

Q. 8. Do you disapprove of any of the kinds of cases handled by local legal services programs? If so, what kinds of cases, and why?

A. I disapprove of any cases being handled by legal services attorneys when such a case is not within the range of cases authorized under the Act.

Q. 9. It has been reported that the Legal Services Corporation transition team criticized the Corporation for flaunting its political independence. Do you agree with the purported transition team's characterization of the Corporation? If so, how do you reconcile this with the Congressional intent expressed in the Act and in the 1974 Senate Report to accompany the Act?

A. I am not familiar with any transition team report or the facts upon which its reported criticism was based. The Act mandates political independence and I wholeheartedly concur with the intent of the Congress that legal services be managed free of political interference.

Q. 10. Please describe the date, nature, and substance of any contact that you have had with White House personnel and other Board nominees concerning the Legal Services Corporation since January, 1981.

A. As I stated at the hearing, the only contacts I have had with the White House were a question as to whether I would accept the appointment if nominated. All other contacts were in connection either with the paper work prior to appointment or with my confirmation. I was advised in late Fall of 1981 that I was being considered and asked would I accept; in November I processed a mound of paper work in connection with the appointment and had several contacts in connection therewith. In December I was advised of the recess appointment. In March 1982 and since, I have had many contacts with the legislative liaison staff relative to confirmation.

Since learning of my appointment in December 1981, but not before, I have had almost weekly contact with one or more members of the Board.

Q. 11. Please describe fully your duties as Executive Assistant Attorney General of Georgia. Specifically, please describe your role in any cases involving legal services against the State of Georgia?

A. I am the principal assistant to the Attorney General. My duties are specified by the Attorney General, not by law. In general, I serve as the manager of the business of the State Law Department, coordinating and supervising the activities of seven substantive law divisions, the administrative office, and the State Library.

I have had no actual participation as counsel in any legal services case although my name and that of the Attorney General appear on all court documents such as pleadings, motions and briefs. I am familiar with many of the cases which have been filed against the State. I have participated in and been privy to decisions affecting the handling of some of these cases, such as a prison conditions case and one involving family commitment of children to State mental health facilities.

Q. 12. Do you think your position on the Board, particularly as Chairperson of the Regulations and Operations Committee, creates a conflict of interest with your State position in the following situations:

-- class action suits against State governments;
-- law suits claiming attorney fees from State government agencies;
-- legislative advocacy by legal services attorneys on behalf of clients in opposition to State government policy?

A. No.

Q. 13. Do you agree that even the appearance of a conflict of interest would be damaging to the Board or the Corporation?

A. I believe that a conflict of interest must be avoided, both in a legal sense and in the fiduciary sense. So stated, I do not believe that I have a conflict of interest by reason of my status on the Board.

Q. 14. If you perceive any potential conflict, what actions will you take to scrupulously avoid any conflict or any appearance of conflict?

A. As to Board activity, I would recuse myself as the law requires. As to activity in the State Law Department, pending my retirement therefrom, I have already received the Attorney General's agreement to insulate me and remove me from any participation, as the matter may require.

Q. 15. Did you submit your name for consideration as a Legal Services Corporation Board nominee? If so, in what manner, to whom, and when did you make such submission? If not, please describe who contacted you, and how and when that contact took place.

A. No. I was contacted by a Mrs. McQuown in the White House personnel office, by telephone, in the late Fall of 1981.

Q. 16. Please describe everything you know about how the other Board nominees were selected.

A. I know nothing about the selection and appointment of other Board members.

RESPONSES BY ROBERT S. STUBBS II
TO QUESTIONS PROPOUNDED
BY SENATOR EAGLETON

Q. In your view, what is the meaning of "full access under law to comprehensive and effective legal services?"

A. Without reference to any specific context, and as a general proposition, I would consider the meaning to be the right to pursue a claim or to assert a legal or equitable interest in the manner permitted by law and practice in any forum in which the claim or interest may legitimately be heard and disposed of, and in which an attorney's services are customarily required for effective representation, without regard to considerations not germane to the resolution of the particular suit.

Q. Do you believe that legal services programs should provide the full spectrum of professional representation -- whether it is approaching a State legislature, contesting the decision of a Governor or other high official, or challenging a State or local statute or ordinance, so long as it is related to the direct professional responsibility to that client and that case?

A. As I have earlier defined the right to legal services, I believe that full access may and should, in a particular case, lead to each such event enumerated in your question.

Q. Do you agree that the provisions of the Legal Services Corporation Act require that there be no interference with a legal services attorney's professional responsibilities?

A. Yes, insofar as a professional relationship pursuant to the Act has been established. I do not understand you to refer to the Act as conferring unbridled discretion on a legal services attorney. If the case is one which may, under the Act, be properly handled by the attorney and he has entered into an attorney-client relationship within the purview of the Act and the regulations issued pursuant thereto, then the Act precludes interference with his professional responsibility to his client.

Q. Do you agree that any guidelines established by the Corporation must be grounded on the principle that there can be no interference with a legal services attorney's professional responsibilities?

A. Yes, again where an attorney-client relationship has been properly established pursuant to the Act. I do not believe that the Congress intended to grant an unbridled discretion to a legal services attorney since the Act specifically contemplates that regulations be issued by the Corporation in conformity with the Act. Thus, the regulations may properly restrict the cases in which an attorney-client relationship under the Act may be created. Further, in order to discharge its responsibility under the Act, the Corporation may require sound, lawyer-like decisions of its grantees in the management of any case properly assumed by a grantee. However, once a case is properly in the hands of the legal services attorney under the foregoing guidelines, it is no longer, in my judgment, a matter in which the Corporation may interfere, by regulation or otherwise.

Q. Do you believe that, under the Act, local programs must be insulated from political interference?

A. The Congress has clearly expressed its view that the Corporation and its activities should be free from political influence and interference. I agree wholeheartedly with that purpose.

Q. Do you think it is the job of the Legal Services Corporation Board to try to set each local program's priorities, or should the Board allow the boards, the staff, and the clients of local programs to do that, in accordance with their own local needs and the resources available to them?

A. The Corporation is a trustee of the public funds placed in its control by the Congress and, to the extent that directives are embraced within the Act or reasonably to be inferred therefrom, must therefore insist that grantees conform to the Corporation's regulations issued pursuant to the Act. My disposition is to recognize complete independence in local activities where no Federal monies are involved.

Q. Do you believe that there are cases in which there may properly be interference by the Board in the professional representation by a staff attorney to an eligible client?

A. The Board would not normally interfere with an individual attorney. The question assumes a proper case for legal services assistance. Any mismanagement of the client's case, to the client's detriment, would be appropriately within the jurisdiction of the grantee agency and its governing authority. Ethical questions generally address themselves to the Bar of which the particular attorney is a member. Grievances professed by third persons should not come to the Corporation in the first instance but should be handled locally or regionally.

Q. Have you ever served as a member of a lawyer referral program? When and how many times have you participated in representing poor clients at low cost or for no charge?

A. I have not yet served as a member of a lawyer referral program. Beginning in 1944 (prior to the time I was admitted to the Bar) and continuing almost to my retirement from the Marine Corps in 1962, I frequently represented accused persons before courts-martial when they could not otherwise obtain counsel of their own choosing. From 1955 until 1959 one of my principal assignments was as a legal assistance officer, rendering the type of legal services you describe. From the early 1960's until about 1971, I provided consultative services in cases handled by the Emory Community Legal Services Center, an OEO funded, law school operated activity. From 1968 to late 1972, I frequently participated as an associate counsel in cases taken pro bono by other attorneys. These last two categories of activity were during my tenure as a full-time law faculty member at Emory University. I could not render a responsible estimate of the number of cases in the Marine Corps, but estimate the cases afterwards to be about 300. I am prohibited from practicing law privately at this time, but will be joining my wife's practice next year and expect to be involved in pro bono legal services for the poor then. My wife presently gives pro bono or low cost services to poorer clients on a regular basis. One of her recent cases representing an indigent mother in getting custody of her child settled required extensive travel, investigation, court appearances, on an appeal, all at no fee, taking about one year to win the case.

Q. Do you now represent, or have you represented, or are you associated in any way with any organization which represents or has represented any client in litigation or negotiations against a party represented by a legal services attorney? If so, describe the nature of such litigation and its current status.

A. Since April 1, 1973, I have been a member of the staff of the Attorney General of Georgia. During this time there have been several cases in which a legal services attorney has represented a plaintiff in a case against a State agency or officer, whose defense the Attorney General provides as a matter of law. I do not recall any case initiated by the Attorney General in which the defendant or respondent was represented by a legal services attorney. I have not participated as lead counsel in any case brought by a legal services attorney, and therefore I could not describe them. Among the cases have been prisoner cases, welfare entitlement, medical treatment and surgery entitlement, child custody and adoption, medical treatment of children, and others of similar import.

Q. The 1974 Committee report on the Legal Services Corporation Act states that Board members should be "fully committed to the role of legal assistance attorneys and support the underlying principle of the legislation that it is in the national interest that the poor have full access under law to comprehensive and effective legal services." Do you support these principles?

A. Yes.

Q. A document purported to be a summary of the Transition Report on the Legal Services Corporation states that the Report presented various options in order to "free up dollars for judicare as well as prohibit some of the more repugnant activities of local programs." Reportedly, among various options presented were:

- providing Governors with a veto over all grants within the State;
- decentralizing Legal Services Corporation by creating regional or state Corporations;
- giving grant-making authority to the regional offices that would be more responsive to local concerns; and
- requiring clients to pay part of the cost of representation.

As a member of the Board, would you support any or all of those options?

A. None of these options is now a part of the Legal Services Corporation Act. My commitment is to the Act. If the Congress amended the Act to incorporate any of these provisions, I would then support the option so made into law.

RESPONSES BY ROBERT S. STUBBS II

TO QUESTIONS PROPOUNDED

BY SENATOR CRANSTON

Q. 1. A. Why do you wish to serve on the Legal Services Corporation Board and what do you think will be the nature of the contribution you will make to the Legal Services Corporation?

A. I wish to serve on the Board of the Legal Services Corporation as a response to a request from the President and as a matter of public and professional responsibility. I have had extensive experience in government, in legal education and as an attorney and believe that my experience can offer new and different perspectives to the issues presented to the Board.

Q. 1. B. What is your understanding as to the duties and responsibilities of a member of the Legal Services Corporation Board?

A. The principal duty and responsibility is to the Congress to carry out the mandates of the Act. In the fulfillment of this duty and responsibility the Board must act to assure that full access to legal services is provided in the promotion of equal justice for all our citizens, and that the funds placed in its hands by the Congress are properly and efficiently managed.

Q. 1. C. What prior involvement have you had with legal services programs?

A. As a faculty member at the Emory University Law School, I served as a trustee of and consultant to the Emory University Community Legal Services Center. I was instrumental with other faculty in establishing the Center, one of the first of its kind in the country, a prototype for the present Legal Services organizations.

Q. 1. D. What organizations concerned with the poor have you been involved in and what was the nature of your involvement?

A. I was a reporter for the American Bar Foundation's Indigent Accused Persons Project, a special consultant to the Georgia State Bar's Special Committee on Assistance to Indigent Criminal Defendants, and a member of the Georgia Committee of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants.

Q. 2. A. (i) Are you familiar with the legal services programs operating in your own community?

(ii) If so, describe the basis for this familiarity and your general views regarding such programs.

A. (i) Yes.

(ii) Observation of activities, discussions with program directors and attorneys, and comments of attorneys.

I am impressed with the quality of the programs' leadership and the commitment of individual attorneys.

Q. 2. B. Would you please comment briefly on the extent to which you believe that the need for legal services is being met -- both in your own community and nationally?

A. I do not know that an adequate inquiry into the needs has been made, or that the legal profession, the courts or the legislatures have considered the full range of alternatives, or that any overall fiscal evaluation of the costs of meeting the needs has been completed. My own perception is that case-by-case service on an individual basis may be marginally adequate, but the broader use of legal services has generated expectations that are not being satisfied. My perception of the national scene, at this juncture, is necessarily what has been reported. In Georgia the role of the organized Bar, especially in Atlanta with the Atlanta Volunteer Legal Foundation, has been to cut into the backlog of cases. The AVLF may well be a prototype by which the Bar can broadly meet its responsibilities.

Q. 3. Under what circumstances, if any, do you feel it would be appropriate for a member of the Legal Services Corporation Board to interfere with a case being handled by a program's staff attorneys?

A. I don't know that the Board itself or a member thereof would or should interfere with the handling of an individual case.

Q. 4. A. (i) Do you believe that it is appropriate for legal services attorneys to litigate against state governments or federal agencies?

(ii) If not, why not?

A. (i) Since the Congress has apparently authorized and countenanced this activity, it would not be appropriate to voice categorical opposition. Many segments of the public do express concern that the right and left hands are often in fists rather than open. If there are wrongs in the administration of legislative programs, then, it is said, the legislature itself should correct them rather than granting funds to an agency to do so in a judicial setting. Another comment is to the effect that governments are diverting funds to the defense of such actions which might better be employed broadly in the public interest. I have seen good come from such suits and I have had real doubts about the wisdom of others. In any event, I think the decision to litigate ought to be carefully reached after due consideration and exhaustion of other means to resolve the problem.

(ii) Not applicable.

Q. 4. B. If a client's rights are being, or may in the future be, violated by the actions or proposed actions of a governmental agency, do you believe it appropriate for legal services programs to seek to have that agency's policies or regulations changed through non-adjudicatory advocacy before that agency?

A. I think that any good lawyer would try to resolve a matter without litigation if his client's interest is adequately served thereby.

Q. 5. A. Do you believe that legal services programs should provide the full spectrum of professional representation to the clients they represent?

A. If by "full spectrum of professional representation" is meant doing what is permitted by law and practice in a forum in which a client's claim or legal or equitable interest may legitimately be heard and disposed of, and which is customarily done by or required of an attorney to give effective representation, then my answer is "yes."

Q. 5. B. What aspect of professional representation do you believe should be denied to low-income clients and why?

A. As I have defined "professional" representation above, I do not think the poverty of a client is a germane consideration. There should be no denial of "professional" representation that is warranted by the circumstances of the case merely because the client has a low income.

Q. 6. Do you believe that a legal services lawyer funded by the Corporation should vigorously pursue cases against the federal government that he or she believes are meritorious, even if they embarrass the government or arouse people in Congress?

A. I do not think that the Congress has conferred unbridled discretion on a legal services lawyer. If the case is one which may, under the Act, be properly handled by the attorney and the grantee agency which employs the attorney has made a sound, lawyer-like decision as to the management of the case, then I think it is irrelevant that the course of the case might embarrass the government or arouse people in the Congress. I would assume that all legitimate avenues to resolve the matter have been considered before a litigating stance is adopted.

Q. 7. Do you agree that it is a legal services attorney's right and responsibility, in consultation with his or her client, to select the forum, remedy, and strategy which is most appropriate to his or her client's needs?

A. If the case is properly placed in the hands of a legal services attorney and appropriate guidelines relative to the local decision to litigate have been met, then the professional responsibility of the attorney dictates that he proceed in the client's best interests, that is, the most efficient and expeditious resolution of the claim or interest asserted by the client. It is the client's interest and not the cause of counsel which must control.

Q. 8. A. Do you agree that Board members must avoid any conflict of interest or appearance of conflict of interest even if not strictly within the proscription of the Legal Services Corporation Act?

A. I believe that a conflict of interest must be avoided, both in a legal sense and in the fiduciary sense.

Q. 8. B. Would you take whatever steps are necessary to remove yourself from any conflict of interest -- or appearance of a conflict of interest -- even in those instances which do not technically fall under the Act's proscriptions?

A. I would seek to avoid any conflict of interest whether specified by the Act or arising under common law concepts of a conflict of interest.

8. C. (No question.)

Q. 8. D. Do you now represent, or have you represented, or are you associated in any way with, any organization which represents or has represented any client in litigation or negotiations against a party represented by a legal services attorney? If so, describe the nature of such litigation and its current status.

(i) Will you terminate any relationship that still exists to such a client regarding any on-going controversy?

(ii) Will you agree not to represent any clients in litigation or negotiations against a party represented by a legal services attorney during your service on the Board of Directors if you are confirmed by the Senate?

(iii) Will your law firm or the entity with which you are affiliated undertake such a case while you serve on the Board?

(iv) If so, what steps will you take to prevent any appearance of conflict of interest in such undertaking?

A. Since April 1, 1973, I have been a member of the staff of the Attorney General of Georgia. During this time there have been several cases in which a legal services attorney has represented a plaintiff in a case against a State agency or officer, whose defense the Attorney General provides as a matter of law. I do not recall any case initiated by the Attorney General in which the defendant or respondent was represented by a legal services attorney. I have not participated as lead counsel in any case brought by a legal services attorney and therefore I could not describe them. Among the cases have been prisoner cases, welfare entitlement, medical treatment and surgery entitlement, child custody and adoption, medical treatment of children, and others of similar import.

(i) Since my office has not initiated litigation against clients represented by a legal services attorney, to terminate my relationship with the Attorney General because suit be brought against the State would mandate my resignation from his staff. I am not lead counsel in any such case and do not feel that my tenure should be subject to the judgment of a plaintiff's attorney. I would divorce myself from any such litigation, however, to the extent possible. This question will become moot, in any event, upon my retirement from the Attorney General's office next year.

(ii) I would not participate in any such actions even though the Attorney General be involved because the suit is brought against the State.

(iii) Yes. The Attorney General is required by the Constitution and laws of Georgia to provide such representation.

(iv) If a suit be brought against a party whose representation the Attorney General is obliged to provide, I would ask that I be removed from any participation in that case.

Q. 9. A. What role do you think clients of legal services programs should have in the operation of local programs?

A. The Congress has specified the role of clients in the Act.

Q. 9. B. What role do you believe clients should have in the activities of the national board?

A. The Congress has specified the role of one qualifying as a client in the Act.

Q. 10. A. What should be the criteria for screening candidates for replacement of Mr. Bradley as permanent president of the Corporation?

A. The Board, in its position announcement, has, in addition to the requirements of the Act, specified the following as desirable qualifications: extensive experience and demonstrated ability in management and administration; experience with Congress, Federal agencies, or other grant-making entities; and, familiarity with legal services or public interest law practice.

Q. 10. B. Would you actively oppose a candidate with a record of antagonism to the legal services program?

A. The Board is committed to the purposes of the Legal Services Corporation Act and the President should be no less committed. I would consider the "record of antagonism" as a significant factor in any decision.

Q. 11. The Legal Services Corporation Act provides that the Board of Directors should include eligible clients and should be generally representative of the organized bar, attorneys providing legal assistance to eligible clients, and the general public; the legislative history further elucidates this latter category to include persons representative of organizations involved in the development of legal assistance for the poor, the academic legal community, women, and minority groups.

A. Which of these categories do you feel you are representative of? Please explain the basis for your answer.

A. I am a member of the State Bar of Georgia. I have been a full-time law school teacher in eleven academic years and have also served as an adjunct professor eight years. I have participated on a number of occasions in the development of programs for legal representation of those unable to procure private counsel. I do not purport to be a representative of any group.

Q. 11. B. (i) Do you feel the nominees submitted to the Senate, taken as a whole, reflect the composition of the Board intended by the Congress?

(ii) If not, what groups do you feel are not represented?

A. (i) Under the Act this is a matter within the President's judgment in the first instance. Whether the intent of the Congress is satisfied is a matter for the judgment of the Senate.

(ii) Not applicable.

Q. 12. How much time would you be prepared to commit during your term to the business of the Legal Services Corporation?

A. I expect to spend whatever time is necessary. The Attorney General has been very supportive of my participation as a member of the Board. I expect to leave the office of the Attorney General in June 1983 to enter private practice with my wife. There will then be no constraints on my time.

Q. 13. What other commitments do you have that will affect the time you may devote to the business of the Corporation?

A. None.

Q. 14. A. Will you have time and do you intend to visit various legal services programs to learn how they operate and what problems and needs they have?

A. Yes.

Q. 14. B. How much time do you plan to devote to such visits?

A. I have no precise figures but, after confirmation, I plan to visit activities in each state in my region and representative activities, particularly those with specialized programs, in other states in the country.

Q. 15. A. Do you agree with the stated objective of the Act to keep the Legal Services program independent of political influence and control.

A. Yes.

Q. 15. B. Do you agree that the independence of the legal services program from political influence and control is critical to its carrying out its statutory mission? Why?

A. Yes. Access to legal services is inherent in assuring the right to equal justice. To subject that access to partisan politics would jeopardize the great right.

Q. 15. C. What steps will you personally take to maintain the independence of the Corporation from political influences?

A. I will personally adhere to my oath and seek to execute the mandate of the Congress in all respects.

Q. 16. Do you have any reservations about supporting the letter and spirit of any provisions of the Legal Services Corporation Act? If so, explain.

A. No.

Q. 17. A. Have you made any speeches, statements, or communications with any public agencies, media, or legal services programs which reflect your basic position on legal services for the poor and/or the Legal Services Corporation? If so, please provide copies of such materials.

A. No.

Q. 17. B. (i) Were you asked to participate in any efforts during the past year either to continue or abolish the Legal Services Corporation?

(ii) By whom were any such requests made and what, if any, action did you take in response to any requests?

A. (i) No.

(ii) Not applicable.

Q. 18. President Reagan has recommended abolition of the Legal Services Corporation. With respect to this recommendation --

A. Are you committed to opposing the abolition of the Legal Services Corporation? If not, why are you accepting this nomination to the Board of Directors?

A. I do not favor the abolition of the Corporation.

Q. 18. B. In relationship to your nomination, have you made any commitments with regard to your position on the question of abolition of the Corporation?

A. No.

Q. 19. Please discuss the nature and timing of your contacts with White House personnel or other representatives of the Administration regarding your nomination and specifically what discussions occurred regarding your position on (A) President Reagan's recommendation that the Corporation be abolished, and (B) the appointment of a temporary or permanent President or any other officer of the Corporation.

A. The only question asked of me by any person in the White House was would I accept the appointment if nominated. All other contacts were in connection either with the paperwork prior to appointment or with this confirmation. I have had no communications about either the abolition of the Corporation or the selection of any officer.

Q. 20. A. What is your position on the appropriateness of the White House participating in, or actually deciding upon, the selection of the President or any other officer of the Corporation?

A. The act makes the selection of the President a matter for the Board.

Q. 20. B. Do you plan to discuss with White House personnel or other Administration representatives such personnel decisions to be made by the Board of Directors?

A. No.

Q. 21. Do you perceive any conflicts of interest arising from your position in the Attorney General's Office of the State of Georgia and any decisions you may face as a member of the Corporation Board of Directors affecting any legal services programs in the State of Georgia?

A. The only conflicts may be those arising from funding decisions relating to grant applications from Georgia programs. Others may find a conflict in litigation directed against the State. Please see my statement which was submitted on April 21, 1982, to the Senate Committee on Labor and Human Resources, a copy of which is attached hereto.

Q. 22. How would you handle such conflicts?

A. I would first abide, without question, the provisions of Section 1005(c) of the Act. If confirmed, and for the balance of my tenure in the office of the Attorney General, I would ask him to remove me from any participation in the case.

RESPONSES BY ROBERT S. STUBBS II

TO QUESTIONS PROPOUNDED

BY SENATOR HAWKINS

Q. In Florida, the Florida Bar Association has instituted an innovative method of financing legal assistance to the poor. Basing their program on British and Canadian programs, the Florida Bar petitioned the Internal Revenue Service for permission to use the interest income from small, short term escrow accounts to finance the legal aid and legal education scholarships administered by the Florida Bar Foundation. The I.R.S. approval of this program took several years and the program was only formally established on September 1st of last year, but already 1,000 attorneys in Florida have signed on to participate in the program and several state bar associations have expressed interest in starting a similar program.

The Florida Bar Association estimates that they will raise about $1 million from the current participants in this program and that they could raise as much as $12-20 million if half of the 30,000 Florida Bar members participated.

What do you think of this proposal as an alternative for financing legal aid to the poor?

A. Georgia has not, through its organized Bar, instituted a program such as that which you have described in Florida. I am advised, however, by the President of the State Bar of Georgia that the matter has received serious consideration by the Executive Committee and the Board of Governors and that he expects, in due time, to submit a proposal to the Supreme Court of Georgia, which must approve any Rule of the State Bar of Georgia.

I would think that any reasonable program for raising income to enhance every citizen's access to the courts for protection of, or redress of injury to, his legal rights would receive the support and approval of each of us. I am not now, however, prepared to regard any such program as an alternative to any other.

Q. The Florida system is voluntary, but I understand that the California Bar is considering a mandatory plan. Do you feel that this system should be mandated to assure stable funding?

A. I have reservations about making the system mandatory. In a broad sense, I think how well the legal profession meets its responsibilities in assuring equal justice for all of our citizens will determine how long and to what extent it may continue its special privileges and special status. Without any suggestion that it is not mindful of its responsibilities, I do believe that voluntary participation, in this particular at least, will be more productive of Bar support.

I am not familiar enough with all the elements of the Florida system to know whether the party whose money is escrowed or the financial institution involved must consent to the disposition of interest in the fashion you have described. Assuming, however, that voluntariness throughout is the hallmark of the Florida system, such a system seems to avoid any constitutional objections that might be raised on grounds of due process or equal protection or some other basis. To convert a voluntary plan into one mandated by law may invoke such objections.

Q. During the 96th session of Congress, a restriction was placed on the appropriations bill that stated "none of the funds appropriated in this title may be used to carry out any activities for or on behalf of any individual who is known to be an alien in the United States in violation of the Immigration and Nationality Act or any other law, convention, or treaty of the U.S. relating to the immigration, exclusion, deportation, or expulsion of aliens."

I would think that this was a very straightforward prohibition against Legal Services Corporation attorneys from representing illegal aliens. However, the General Counsel of the Legal Services Corporation has interpreted this restriction as applying only to aliens that have completed adjudication and whom a final order of deportation is outstanding which is not subject to further judicial review.

Do you feel that this legal interpretation is circumventing Congressional intent?

A. The opinion of General Counsel is one of several presently under review by the Board. The question of construction seems to center on the phrase "known to be an alien in the United States in violation of...law." At first blush, at least, representation of aliens would be suspect.

Q. As you know, there has been a great deal of Congressional activity to redefine this prohibition to make it more effective. The House amendment differs from the restriction the Senate placed on the vetoed Continuing Resolution in that the House version places an affirmative duty upon Legal Services Corporation attorneys to ascertain a client's eligibility before services are rendered.

Do you feel that this additional duty is necessary to prevent Legal Services Corporation attorneys from circumventing the intent of the law by intentionally not asking whether the client is legally in the U.S.?

A. It is the duty of the Board to insure that the intent of the Congress be followed in the implementation of the Act. If a situation arises in which the law is unclear or, as applied, inconsistent with the professed intent of the Congress, then the Board should bring this to the attention of the Congress which will then determine, as a matter of legislative judgment, whether further legislation is necessary.

REC'D APR 26 1982

[illegible]

United States Senate
COMMITTEE ON LABOR AND
HUMAN RESOURCES
WASHINGTON, D.C. 20510

April 21, 1982

Mr. George E. Paras
Attorney at Law
Greve, Clifford, Diepenbrock and Paras
455 Capitol Mall, Suite 725
Sacramento, California 95814

Dear Mr. Paras:

We appreciate your appearing before the Committee on Labor and Human Resources today at your confirmation hearing.

Attached are additional questions which we feel important to be answered by each nominee to develop a complete record for the Committee's review. We would appreciate your responses at the earliest possible date.

We have also enclosed an addressed envelope for your convenience in returning your responses to us.

Very truly yours,

Ted Kennedy
Edward M. Kennedy, U. S. S.

Tom Eagleton
Thomas F. Eagleton, U. S. S.

Jennings Randolph
Jennings Randolph, U. S. S.

Don Riegle
Donald W. Riegle, Jr., U. S. S.

Claiborne Pell, U. S. S.

Howard Metzenbaum
Howard M. Metzenbaum, U. S. S.

Mail to
Whit Hse
4/27/82

ADDITIONAL QUESTIONS SUBMITTED TO GEORGE E. PARAS

1. The Legal Services Corporation Act requires that no more than six members of the Corporation Board shall be of the same political party. Of what political persuasion are you?

2. What steps have you taken to acquaint yourself with programs funded by the Corporation? Have you personally visited legal services projects? If not, will you commit yourself to doing so?

3. What attempts have you made to acquaint yourself with the needs of eligible clients of the Legal Services Corporation?

4. As you know, the funding level for the Corporation was reduced by 25 percent from FY 1981 to FY 1982 -- from $321 million to $241 million. The Corporation has requested a budget of $265 million for FY 1983. Is the amount appropriated for FY 1982 adequate to meet the need for legal services for the poor? Would the Corporation request of $265 million for FY 1983 be adequate to meet such need?

5. What savings in funds, if any, do you believe can be implemented by the Legal Services Corporation within the construct of the present Act? What savings, if any, do you believe could be achieved through statutory changes in the Act? Do you favor any such administrative or statutory changes?

   Do you think that cost effectiveness theories dictate that some types of legal services attorneys' work be halted? If so, what types of work, and why?

6. Do you favor restricting any areas of legal services attorneys' activities? If so, what kinds of restrictions do you favor, and on what basis?

7. Do you have any reservations regarding legal services attorneys becoming involved with suits against local or state governments, or the federal government? If so, please indicate the nature of your reservations?

8. Do you disapprove of any of the kinds of cases handled by local legal services programs? If so, what kinds of cases and why?

9. It has been reported that the Legal Services Corporation transition team criticized the Corporation for flaunting its political independence. Do you agree with the purported transition team's characterization of the Corporation? If so, how do you reconcile this with the Congressional intent expressed in the Act and in the 1974 Senate Report to accompany the Act?

10. Please describe the date, nature, and substance of any contact that you have had with White House personnel and other Board nominees concerning the Legal Services Corporation since January, 1981.

11. Did you submit your name for consideration as a Legal Services Corporation Board nominee? If so, in what manner, to whom, and when did you make such submission? If not, please describe who contacted you, and how and when that contact took place.

12. Please describe everything you know about how the other Board nominees were selected.

1. Democrat

2. I have taken no steps to acquaint myself with programs funded by the Corporation other than the Northern California Program headquartered in my own city. As to it,I have visited its facility, talked to its personnel, and made myself personally a part of its operation. I have committed myself to continue such involvement, including the direct representation of legal services clients. I make that further future commitment in response to your question.

3. I have conferred with Don Griesman and Roberta Sanstrom, Director and Assistant Director of my local Legal Aid office.

4. The FY 1982, as well as the FY 1983 amounts, in my opinion, are not ample, but they will suffice.

5. I am presently aware of no available savings within the present Act, and I favor no changes. I do not currently advocate any halt in any legal services currently authorized by Congress.

6. No.

7. No.

8. No.

9. I know nothing sufficiently specific on this subject to give you an intelligent answer.

10. Re White House personnel, I met Robert Cabel in early March 1982 at the White House for about a one-half hour period during which the confirmation hearing was discussed. He telephoned me a week before the hearing to make sure I would come. I met him again the morning of the hearing at the Wellington Hotel in Washington, D. C. for the same purpose. He phoned me on April 23, 1982 regarding this questionnaire. Sometime in November 1981 I spoke on the phone to a woman named "Barbara" at the White House who asked me to fill out the FBI clearance forms that would be sent to me. I recall no other White House contacts.

    As to other nominees, I spoke to William Olsen on December 31, 1981 regarding the Board meeting held later that day, its purpose and subject. Sometime in January 1982 I spoke by phone to Robert Stubbs regarding our general anticipated corporate duties (nothing specific and no planning). I met all the prospective Board members at the Washington meeting in early March 1982 - the discussions were public and on record. I met most of them again at the confirmation hearing - discussions are public.

11. No. I was contacted by Ronald Zumbrun by phone in September (I think) 1981 and asked if I would accept a nomination if offered. I answered affirmatively.

12. Nothing at all.

April 27, 1982

GEORGE E. PARAS

1. A. Why do you wish to serve on the Legal Services Corporation Board and what do you think will be the nature of the contribution you will make to the Legal Services Corporation?

   B. What is your understanding as to the duties and responsibilities of a member of the Legal Services Corporation Board?

   C. What prior involvement have you had with legal services programs?

2. A. Do you believe that legal services programs should provide the full spectrum of professional representation to the clients they represent?

   B. What aspect of professional representation do you believe should be denied to low-income clients and why?

3. Do you agree that it is a legal services attorney's right and responsibility, in consultation with his or her client, to select the forum, remedy, and strategy which is most appropriate to his or her clients needs?

1. A. Because of a sense of public duty and the belief that I can contribute meaningfully to the achievement of the LSA's objectives.

B. To carry out the statutory mandate of Congress as expressed in the Act.

C. 1954 to 1956, as Sacramento County Bar Association Secretary I supervised, and in large measure administered the Sacramento County Legal Aid Program.

2. A. I am not sure I understand the concept of "spectrum." But I believe the question is answered by my belief that all reasonable action should be brought to bear to solve a client's legal problem, as much in legal services as in the private sector.

B. None that I would not deny to a private, paying client.

3. Yes

Dated: April 27, 1982

GEORGE E. PARAS

QUESTIONS FOR LEGAL SERVICES NOMINEES

1. AS I STATED EARLIER, THE INITIAL PURPOSE OF THE LEGAL SERVICES PROGRAM IS TO ASSURE THAT PEOPLE ARE NOT DENIED ACCESS TO JUSTICE BECAUSE OF THEIR ECONOMIC CIRCUMSTANCES. IS THERE ANY NOMINEE THAT DOES NOT BELIEVE IN THAT BASIC PURPOSE?

2. WHAT ASSURANCE CAN YOU GIVE THIS COMMITTEE THAT THE BOARD WILL BE LEFT FREE FROM POLITICAL INFLUENCE?

3. OVER THE YEARS, CONGRESS HAS CONTINUALLY AGONIZED OVER ITS DESIRE TO PROVIDE LEGAL SERVICES TO THE POOR WHILE TRYING TO CURTAIL THE GROWING LOBBYING AND SOCIAL CHANGE ACTIVITIES IN WHICH MANY STAFF MEMBERS ARE NOW INVOLVED. WE ARE CONSTANTLY PLACING NEW RESTRICTIONS AGAINST POLITICAL ACTIVITY, LOBBYING, ETC., BUT EACH YEAR STAFF "GETS MORE CREATIVE." DO YOU HAVE ANY THOUGHTS ON HOW YOU MIGHT HELP US WITH OUR DILEMMA?

4. THERE ARE SOME OF US WHO QUESTION THE VALUE OF THE "SUPPORT PROJECTS" NOT ONLY FOR THEIR BEING ON THE VERGE OF BEING LOBBYING CENTERS, BUT ON A COST EFFECTIVE BASIS. THAT IS, WOULDN'T IT BE MORE EFFECTIVE TO HAVE THAT MONEY PUT INTO PROVIDING DIRECT SERVICE TO THE PEOPLE?

1. No.
2. My word that I shall do whatever I can to prevent it.
3. No. You alone can enact legistation - The LSA Board can only do as you direct.
4. I have not studied that question sufficiently to enable me to give an intelligent answer.

Dated: April 17, 1982

GEORGE E. PARAS

GEORGE PARAS
(Eagelton Questions)

GENERAL QUESTIONS

1. In your view, what is the meaning of "full access under law to comprehensive and effective legal services?

> ANSWER: It means that one who cannot afford to pay for the services of a lawyer but who has a legal problem requiring a lawyer should have and be served by a lawyer as though he could afford him.

2. Do you believe that legal services programs should provide the full spectrum of professional representation - whether it is approaching a state legislature, contesting the decision of a Governor or other high official or challenging a State or local statute or ordinance, so long as it is related to the direct professional responsibility to that client and that case?

> ANSWER: I don't fully comprehend the concept of "spectrum". But I believe that all reasonable action should be brought to bear to solve any client's legal problem, as much in legal services as in the private sector. With that understanding, my answer is "yes".

3. Do you agree that the provisions of the Legal Services Corporation Act require that there be no interference with a legal services attorney's professional responsibilities?

> ANSWER: Yes.

4. Do you agree that any guidelines established by the Corporation must be grounded on the principle that there can be no interference of a legal service attorney's professional responsibilities?

> ANSWER: Yes.

5. Do you believe that, under the Act, local programs must be insulated from political interference?

ANSWER: Yes.

6. Do you think it is the job of the Legal Services Corporation Board to begin to set each local program's priorities, or should the Board allow the Board, the staff, and the clients of local programs to do that in accordance with their own local needs and the resources available to them?

ANSWER: Generally I believe in local independence. But to the extent that the Act imposes supervisory responsibility upon the Board, the Board should not shirk it.

7. Do you believe that there are cases in which there may properly be interference by the Board in the professional representation by a staff attorney to an eligible client?

ANSWER: I can conceive of no such case.

8. Have you ever served as a member of a lawyer referral program - when and how many times have you participated in representing poor clients at low cost or for no charge?

ANSWER: Yes, between 1954 and 1956 inclusive. Over the years I have represented well over 500 poor clients at low cost or no charge.

9. Do you now represent, or have you represented, or are you associated in any way with any organization which represents or has represented any client in litigation or negotiations against a party represented by a legal services

attorney? If so, describe the nature of such litigation and its current status.

> ANSWER: From 1953 to 1970 I practiced general law in Sacramento, California. Undoubtedly during that period I represented clients against a party represented by a legal services attorney. I have no specific recollection of such a case however. Since August 3, 1981, I have been engaged in law practice with a private law firm in which I am a partner; I am aware of no case in our office in which that circumstance has existed, but we are 16 lawyers and I may have missed something.

10. The 1974 Committee report on the Legal Services Corporation Act states that Board members should be "fully committed to the role of legal assistance attorneys and support the underlying principle of the legislation that it is in the national interest that the poor have full access under law to comprehensive and effective legal services."

Do you support these principles?

ANSWER: Yes.

11. A document purported to be a summary of the Transition Report of the Legal Services Corporation, states that the Report presented various options in order to "free up dollars for judicare as well as prohibit some of the more repugnant activities of local programs." Reportedly, among various options presented were

- providing Governors with a veto over all grants within a state;
- decentralizing LSC by creating regional or state corporations;

- giving grant-making authority to the regional offices that would be more responsive to local concerns; and
- requiring clients to pay part of the cost of representation.

As a member of the Board, would you support any or all of those options?

ANSWER: No.

May 12, 1982

GEORGE E. PARAS

ANSWERS TO QUESTIONS FROM SENATOR ALAN CRANSTON FOR GEORGE PARAS, NOMINEE FOR BOARD OF DIRECTORS, LEGAL SERVICES CORPORATION

1. A letter which you publicly disseminated regarding the appointment of now Justice Cruz Reynoso to the California Supreme Court, in which, among other things, you refer to Justice Reynoso as a "professional Mexican", has resulted in considerable concern about your sensitivity to the needs of low-income minority clients of legal services programs, especially those of Hispanic descent.

A. How do you respond to those concerns?

ANSWER: Those concerns, if indeed they exist at all, are wholly unwarranted. The fact that Justice Reynoso is a professional Mexican is in no way related to the needs of minority clients of legal services programs. Such needs must be satisfied to the same extent as those of non-minority clients. All persons who reasonably require legal services and who cannot afford them should nonetheless receive them; to this principle I have always been and will remain ardently dedicated.

B. Do you believe that the minority clients of the legal services programs have a valid basis for being apprehensive about your appointment on the basis of your statements in the letter regarding Justice Reynoso? Please explain your response.

ANSWER: Absolutely not! On the contrary, they should be reassured. No fair minded person can read the letter in its entirety without recognizing my insistence upon complete equality of access to the courts and of impartial decisions and rulings, with no regard for ethnicity or wealth. A Hispanic poor person with a legal problem will see it treated by me with the identical care and concern as that of Black, White, or other persons similarly situated. The following passage from my letter should fully illustrate my feelings and attitude toward poor people, all poor people:

"For years I have been bewildered by the fact that you and I should have seen virtually everything eye to eye, coming from almost the idential backgrounds. We both came from immigrant parents, both at the time of the depression, both very poor, both long treated by the 'Nordics' of our society as something less than normal. Yet we have agreed upon virtually nothing. I think I have now reached the right conclusion as to why this is so. My major premise was wrong. I don't believe you were ever genuinely poor. You were the son of an immigrant alright, but you never knew true poverty or need; nor were you personally ever oppressed. I also don't believe that you ever felt the real sting of discrimination. Had you suffered these experiences, we would have had to think alike."

2. Legal services attorneys have, upon occasion, represented eligible clients in class action litigation.

A. Do you have any reservations regarding the propriety of class action representation by legal services attorneys, assuming such representation complies with the applicable state or federal rules regarding class action litigation?

ANSWER: No.

B. Do you think class action litigation rules should be any different for clients represented by legal services attorneys than for clients represented by attorneys in private practice? If so, please explain the basis for such a distinction.

ANSWER: No.

3. A. Are you familiar with the affirmative action hiring policies of the Legal Services Corporation?

ANSWER: No.

B. Do you have any reservations regarding these policies?

ANSWER: Not applicable.

4. As a member of the California judiciary, you have expressed concerns about frivolous appeals. As a member of the Legal Services Corporation Board of Directors, would you advocate adoption of a policy by the Legal Services Corporation which would subject cases brought on behalf of legal services clients to any standards different from those applied to all litigants regarding those cases that would be appealed?

ANSWER: The standard should be the same, whether the client be rich, poor, governmental, corporate, etc. I have very strong feelings about the use and abuse of our judicial system both at the trial and appellate levels, but they do not relate to the identity of the litigant.

Dated: 4/15/82

GEORGE E. PARAS

ANSWERS TO INQUIRIES OF SENATOR HAWKINS

I do not fully understand how "small, short term escrow accounts" can yield interest with which to finance legal aid work. But if it works legitimately and produces that result, I certainly support it. I cannot say however that it should or should not be made mandatory until I thoroughly understand it.

1. Yes.

2. I do not find it inappropriate. But neither do I find it necessary.

April 19, 1982

GEORGE E. PARAS

ANSWERS BY GEORGE E. PARAS TO QUESTIONS FROM SENATOR ALAN CRANSTON TO NOMINEES FOR THE LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

1. A. An entity as important to the public as the Legal Services Corporation requires highly qualified and experienced leadership. It's board must be composed of highly capable persons, particularly the lawyer members. I consider myself well qualified for this position and hope to contribute materially to the well being of poor people throughout the nation who are in need of legal assistance.

B. To administer the corporation in accordance with the statutes and bylaws governing it.

C. During the calendar years 1954 to 1956, inclusive, I served as Secretary of the Sacramento County Bar Association. At that time there was no governmentally sponsored legal aid, but our association administered with its own funds a legal aid program, furnishing lawyers to the poor on a volunteer basis from the associations' members. For all practical purposes I was the Chief Executive officer of the association, and among my principal duties was the supervision of the legal aid program in conjunction with a concurrent lawyer referral service program. During this period, I was most intimately involved with both programs.

D. None, except as stated in 1C.

2. A. (i) Yes.

(ii) Within the past few weeks I visited the physical plant of the Northern California Legal Aid office headquartered in the City of Sacramento. Thereafter, I sat in on a two-hour conference with the Director and Assistant Director of that program, during which time I requested and obtained a rather substantial education regarding our local program, its activities and its problems.

B. From what I was told by the Director and Assistant Director, the need for legal services is not being met in our community. There are not enough lawyers, nor is there enough time to adequately handle the multitude of legal problems that should be addressed. On a national basis, I can only comment on the basis of materials I have read and on the basis of discussions I have had with lawyers from such areas; based upon that, I conclude that by and large the need is again not being met.

3. At the moment, I can envision no circumstance which would warrant interference by a board member with a case being handled by a program's staff attorney.

4. A. (i) Yes.

(ii) Not applicable.

B. Yes.

5. A. I do not fully understand this question. A legal problem is a legal problem, which must be addressed and resolved. Whatever it takes to resolve it, in a private context or in a legal aid context, should be undertaken. All of course within reasonable bounds, applicable both to legal aid and non-legal aid problems.

B. Again, I am not certain I understand the question. Generally, I would deny to no client any aspect of professional representation I would accord to another client. All clients are clients, and should be equally served by their lawyers; and realities must always be considered.

6. Generally, yes.

7. Yes.

8. A. Yes.

B. Yes.

D. From 1953 to 1970, I practiced general law in Sacramento, California. Undoubtedly during that period I represented clients in litigation against a party represented by a legal services attorney. I have no specific recollection of such a case however. Since August 3, 1981, I have been engaged in private law practice in Sacramento, California with a private law firm in which I am a partner; I am aware of no case in our office in which that circumstance has existed, but we are a group of 16 lawyers, and I may have missed something. I would of course disqualify myself in any case in which an opposite position is taken by a legal services attorney. I am certain that my law firm would do so as to any other of our lawyers, provided that we felt there was a true conflict, or even an appearance of impropriety. I cannot state categorically at this time, however, ~~believe~~ that every case in which one of my lawyer associates represents a party whose antagonist is represented by a legal services attorney compels such disqualification. Of course, I would be governed by any regulation the LSC Board of Directors would adopt in that regard, but I simply have not thought out fully the implications of the question to every imaginable case. In any event, under no circumstances will I or my law firm permit ourselves to be in a conflict of interest situation involving legal services or anything else, and any doubt in that regard would be resolved in favor of recusal.

9. A. I have no personal opinion on this subject.

B. I have no personal opinion on this subject.

10. A. I would look for a person of the character and quality of Thomas Ehrlich and Dan Bradley.

B. Yes.

11. I consider myself a representative of the organized bar and also an attorney providing legal assistance to eligible clients. At my meeting with the Director and Assistant Director of the Northern California Legal Aid Association, I offered my services on a regular basis to the local office in a direct capacity of a lawyer assisting eligible clients. This offer was promptly accepted, but I have not yet performed my first duty. I do expect to work regularly at the local office at least once a month and at least one-half day per month.

B. (i) Yes.

(ii) Not applicable.

12. About two to three full days per month.

15/2

13. I am a full-time law practitioner in a private law firm. My partners however are willing to accept my absence for the purpose of serving as a Director of the corporation.

14. A. Yes.

B. Apart from my specific intention of actually working in the Sacramento office on a periodic and continuous basis, I have not formulated specific plans relative to other legal services programs. I do however intend to formulate a more specific program. By visiting such programs elsewhere than in my own city, I hope to assist in improving legal aid in my own community as well as through my LSA directorship.

15. A. Yes.

B. Yes. This is a matter of helping those who need legal help, a vital segment of every lawyer's professional duty. It transcends politics and political considerations.

C. I anticipate and intend no such steps, because thus far I have seen no threat to the independence of the Corporation. If such a threat develops I would take all reasonable action to avert it.

16. No.

17. A. No.

B. (i) No.

(ii) Not applicable.

18. A. No.

B. No.

19. I was contacted once by telephone in late 1981, by a person not from the White House, who asked me if I would accept an appointment to the Legal Services Corporation Board if such an appointment were offered. I answered affirmatively and that was the sole contact until my recent appointment was made. There were no discussions whatever regarding abolition of the corporation or the appointment of a permanent or temporary president or other officer.

20. A. I believe the statute makes it the duty of the board to select a president or any other officer of the corporation. Accordingly it is inappropriate for the White House or anyone else to make this decision.

B. No.

DATED: April 16, 1982.

GEORGE E. PARAS

ADDITIONAL QUESTIONS
SUBMITTED TO HOWARD H. DANA, JR. BY SENATORS KENNEDY, RANDOLPH, PELL, EAGLETON, RIEGLE and METZENBAUM

Q.1. The Legal Services Corporation Act requires that no more than six members of the Corporation Board shall be of the same political party. Of what political persuasion are you?

A.1. Republican.

Q.2. What steps have you taken to acquaint yourself with programs funded by the Corporation? Have you personally visited legal services projects? If not, will you commit yourself to doing so?

A.2. Since my appointment, I have devoted several hundred hours to reading, discussing and studying the Legal Service Corporation and its programs; to learning the job of a Director; and to serving as a recess appointee. I have visited our local program. I have several friends within the program here in Maine and consider myself reasonably knowledgeable about the program. I look forward to visiting many offices throughout the country, starting with the Denver regional office next week.

Q.3. What attempts have you made to acquaint yourself with the needs of eligible clients of the Legal Services Corporation?

A.3. To date I have not spent any time "specifically" learning about the needs of eligible clients. I have recently co-chaired a Maine Bar Association program entitled: Legal Services for the Poor: Approaches for the '80's.

Q.4. As you know, the funding level for the Corporation was reduced by 25 percent from FY 1981 to FY 1982--from $321 million to $241 million. The Corporation has requested a budget of $265 million for FY 1983. Is the amount appropriated for FY 1982 adequate to meet the need for legal services for the poor? Would the Corporation request of $265 million for FY 1983 be adequate to meet such need?

A.4. No. No.

Q.5. What savings in funds, if any, do you believe can be implemented by the Legal Services Corporation within the construct of the present Act? What savings, if any, do you believe could be achieved through statutory changes in the Act? Do you favor any such administrative or statutory changes?

Do you think that cost effectiveness theories dictate that some types of legal services attorneys' work be halted? If so, what types of work, and why?

A.5. I do not have a firm opinion about any savings proposal. I do believe that the 10 percent set aside for private bar involvement promoted by the recently replaced Board will result in a substantial increase in the amount of services provided for the dollars expended.

I intend to keep an open mind on all proposals for change. I have none that I am presently prepared to advance without further study.

I know that many programs have been required to reduce some of their legislative and regulatory advocacy because of legislative restrictions and reduced funding. Where elected officials and other governmental advocates are purporting to advance the same interests, I believe that it is not inappropriate for a local board to consider that fact in setting priorities for their program.

Q.6. Do you favor restricting any areas of legal services attorneys' activities? If so, what kinds of restrictions do you favor, and on what basis?

A.6. I do not favor restricting any legal and ethical advocacy for a specific eligible client. I do have reservations about advocacy for a large segment of society. It seems to me that this is the function of politicians. Whether or not legal service lawyers devote significant amounts of time to clientless endeavors is something I am unclear on. To the extent that they do, I believe they tend to undermine the public support for a program designed to provide access to the judicial system for the poor. By the above I do not mean to characterize class actions as necessarily clientless endeavors.

Q.7. Do you have any reservations regarding legal services attorneys becoming involved with suits against local or state governments, or the federal government? If so, please indicate the nature of your reservations?

A.7. No.

Q.8. Do you disapprove of any of the kinds of cases handled by local legal services programs? If so, what kinds of cases and why?

A.8. See my answer to Q.6.

Q.9. It has been reported that the Legal Services Corporation transition team criticized the Corporation for flaunting its political independence. Do you agree with the purported transition team's characterization of the Corporation? If so, how do you reconcile this with the Congressional intent expressed in the Act and in the 1974 Senate Report to accompany the Act?

A.9. I hope that the Corporation continues to be politically independent.

Q.10. Please describe the date, nature, and substance of any contact that you have had with White House personnel and other

Board nominees concerning the Legal Services Corporation since January, 1981.

A.10. As a Reagan delegate in Kansas City, the Reagan for President Chairman in Maine, the Reagan-Bush Chairman in Maine, the Inaugural Coordinator in Maine, the Chairman of the Maine Patronage Committee (involved in recommending Maine citizens to the Reagan Administration for employment and public service) and as Chairman of the Emery Group and David Emery's Finance Chairman, I have had hundreds of contacts with the White House since January, 1981. In early 1981 I submitted my name to the White House as someone who would like to serve on the Board of the Legal Services Corp.. In connection with my duties as set forth above I would inquire as to the status of my request. Please see my answer to Question 11 below and my answer to Question 19 from Senator Cranston. Sometime in late 1981 I was advised by the White House that I was to be appointed to the LSC Board and was asked to submit and did submit substantial background information.

On December 30, 1981 I was advised by Mr. Moorhead of my appointment. I conferred with Mr. Olson. I flew to Washington on December 31 and conferred with the White House as to my status and as to Legal Service Corporations's Legal Status and Regulations. I attended the first meeting of the Board and flew home to Maine.

Since December, 1981, I have had virtually no contact with White House personnel concerning the Legal Services Corporation other than in connection with arranging and preparing for the confirmation hearings, except I did inquire on occasion when the additional nominees would be appointed and when names would be forwarded to the Senate. I have spoken with White House personnel about other matters (Maine politics and Maine patronage) and may in passing have made some inconsequential remarks concerning the Corporation and my efforts to quickly learn what I needed to know while being sued in the Courts and mischaracterized in the Press.

A part of almost every day has been spent learning about and performing my responsibility as a Director of the Legal Services Corporation. Much of the time has been spent talking by telephone with other Board members and nominees. Additionally, we have had at least two meetings in Washington which by and large were open to the public.

Q.11. Did you submit your name for consideration as a Legal Services Corporation Board nominee? If so, in what manner, to whom, and when did you make such submission? If not, please describe who contacted you, and how and when that contact took place.

A.11. I submitted my own name to Mr. Wayne Roberts, formerly of the White House Personnel Office, in the early part of 1981 probably on the telephone. I followed up that communication with a resume. See answer to Question 10.

Q.12. Please describe everything you know about how the other Board nominees were selected.

A.12 I know nothing of how the other nominees were selected. I know that Mr. Olson was on the Transition Team, and that Mrs. Annie Slaughter is a friend of his. I believe he may have suggested her name to the White House.

HOWARD DANA
[Eagleton questions]

GENERAL QUESTIONS

Q. In your view, what is the meaning of "full access under law to comprehensive and effective legal services?"

A. "Full access under law to comprehensive and effective legal services" means readily available legal services which are effective.

Q. Do you believe that legal services programs should provide the full spectrum of professional representation -- whether it is approaching a State legislature, contesting the decision of a Governor or other high official, or challenging a State or local statute or ordinance, so long as it is related to the direct professional responsibility to that client and that case?

A. Yes, unless proscribed by law.

Q. Do you agree that the provisions of the Legal Services Corporation Act require that there be no interference with a legal services attorney's professional responsibilities?

A. I agree that Section 1006(b)(3) provides almost that and further that the Corporation has an affirmative duty to ensure that activities under the Act are carried out in a manner consistent with an attorney's professional responsibilities. See also Section Section 1007(a)(7) and 1007(a)(10).

Q. Do you agree that any guidelines established by the Corporation must be grounded on the principle that there can be no interference with a legal services attorney's professional responsibilities?

A. I agree that Congress can under the Constitution impose restrictions on the type of cases and the type of remedies that can be pursued by the Corporation and its grantees. Guidelines must not be inconsistent with the Act.

Q. Do you believe that, under the Act, local programs must be insulated from political interference?

A. Yes.

Q. Do you think it is the job of the Legal Services Corporation Board to try to set each local program's priorities, or should the Board allow the boards, the staff, and the clients of local programs to do that, in accordance with their own local needs and the resources available to them?

A. The Act provides in Section 1007(a)(2)(C), that the Corporation can set "goals" but that recipients are to adopt "procedures for determining and implementing priorities."

Q. Do you believe that there are cases in which there may properly be interference by the Board in the professional representation by a staff attorney to an eligible client?

A. No.

Q. Have you ever served as a member of a lawyer referral program? When and how many times have you participated in representing poor clients at low cost or for no charge?

A. While in law school, I worked in the Cornell Legal Aid Clinic. I do not recall the number of cases I was involved in. Following a Federal clerkship, in 1967 I joined the firm I am with today. I have taken perhaps a dozen referrals from either the Cumberland County Legal Aid Society or the Pine Tree Legal Assistance, Inc. In addition, I have represented several clients without fee. Since about 1974, my firm has regularly donated annually a given number of pro bono hours per attorney.

Q. Do you now represent, or have you represented, or are you associated in any way with any organization which represents or has represented any client in litigation or negotiations against a party represented by a legal services attorney? If so, describe the nature of such litigation and its current status.

A. Yes. See Exhibit A attached hereto.

Q. The 1974 Committee report on the Legal Services Corporation Act states that Board members should be "fully committed to the role of legal assistance attorneys and support the underlying principle of the legislation that it is in the national interest that the poor have full access under law to comprehensive and effective legal services."
Do you support these principles?

A. Yes.

Q. A document purported to be a summary of the Transition Report on the Legal Services Corporation, states that the Report presented various options in order to "free up dollars for judicare as well as prohibit some of the more repugnant activities of local programs." Reportedly, among various options presented were:

---providing Governors with a veto over all grants within the State;

---decentralizing LSC by creating regional or state corporations;

---giving grant-making authority to the regional offices that would be more responsive to local concerns; and

---requiring clients to pay part of the cost of representation.

As a member of the Board, would you support any or all of those options?

A. First, I have never seen or read the Transition Report.

Second, I currently favor any program which utilizes and promotes the involvement of private attorneys in the delivery of legal services to the poor. What is needed today is a partnership between the staff-attorneys and the private bar designed to maximize the delivery of legal services to the poor.

Without having given much thought to the proposals set out in the above question, I think that the first three suggestions violate the Act in several respects. I do feel that requiring clients who can afford to pay something toward the cost of their representation might mitigate one problem.

Although I have no statistically significant data on this, I believe that some people believe that some legal service clients have no particular incentive to settle or resolve disputes. Perhaps the greatest societal function of attorneys' fees is that they cause settlements. If legal services clients who could afford to make minimal payment knew that they were paying something for the time and energy expended in their behalf, they would have the same incentive to settle their disputes as their adversary.

EXHIBIT A

One attorney has represented a school board in several cases in which Pine Tree Legal Assistance, Inc. has represented students and/or student's parents.

One attorney represented a town which was enforcing a law which Pine Tree, on behalf of a client, attempted to have declared unconstitutional.

One attorney represents employer clients defending unemployment compensation claims which were brought by claimants represented by Pine Tree. That attorney also served on the Pine Tree Board of Directors in the recent past.

One attorney represented a bank in a foreclosure proceeding in which the property owner was represented by Pine Tree.

One attorney represented another bank in a foreclosure action in which one of the stockholders of the mortgagor was represented by Pine Tree.

One attorney has represented industrial clients in electric rate proceedings in which Pine Tree has appeared on behalf of residential clients. That same attorney has represented a utility in rate proceedings in which Pine Tree has appeared in opposition to rate requests.

One attorney has represented a variety of clients in divorce actions in which Pine Tree was on the other side. He also represented a Bank in a mortgage foreclosure. That attorney is a former director and a former President of Pine Tree.

One attorney represented an insurance carrier in a dispute over coverage in which the plaintiff was represented by Pine Tree.

Several attorneys have appeared before various legislative committees and taken positions on literally hundreds of bills in opposition to positions being espoused by Pine Tree.

There may be other cases of which I am not now aware in which one or more of my partners or associates have appeared in opposition to Pine Tree.

HOWARD H. DANA, JR.

ANSWERS TO QUESTIONS FROM SENATOR ALAN CRANSTON

Q.1. A. Why do you wish to serve on the Legal Services Corporation Board and what do you think will be the nature of the contribution you will make to the Legal Services Corporation?

A.1.A. The Corporation has made a substantial contribution to our legal system's promise of providing equal justice under law. A society cannot insist that its citizens use the judicial system for resolving disputes if the system does not work. Unfortunately, our system does not work without the assistance of a lawyer.

I believe that until recently, the Corporation and those organizations receiving its grants have promoted the staff-attorney approach to legal services to the virtual exclusion of vehicles which involve the private attorney. I strongly support the recent initiatives of the old Board, Congress, and the ABA to expand the level of involvement of the private Bar. As a Board member, I would work to reinforce and solidify a sense of common mission between full-time staff attorneys and the private Bar, always with the objective of maximizing the amount and quality of legal assistance to the poor.

Q.1.B. What is your understanding as to the duties and responsibilities of a member of the Legal Services Corporation Board?

A.1.B. I understand the function of the Board of Directors of the Legal Services Corporation is to carry out the terms of the Legal Services Corporation Act as amended. Our major responsibilities involve setting goals and objectives, making broad policy determinations, promoting long-range planning, providing managerial oversight, and serving as liason between the Corporation and a variety of other entities. An extremely important function is the selection of a new President.

Q.1.C. What prior involvement have you had with legal services programs?

A.1.C. In the late 60's, I was Treasurer of my local OEO Community Action Agency, the Portland Regional Opportunity Program, which interfaced to some degree with the OEO funded legal services agency, Pine Tree Legal Assistance, Inc.

One of my partners was one of the original directors of Pine Tree Legal Assistance, and served as President; another Partner has subsequently served as director.

As a younger lawyer, I had at least one case in which a legal services lawyer represented the other side.

Our law firm and a number of other firms in the state have, for many years, provided numerous pro bono hours in a cooperative program with Pine Tree Legal Assistance and other. I personally did some of that referral work.

Recently I joined with another attorney in private practice and two Pine Tree Legal Assistance attorneys in writing the brief to the United States Supreme Court in Maine v. Thiboutot, 448 U.S. 1, 100 S.Ct. 2502 (1980).

More recently, I co-chaired with the Director of Pine Tree Legal Assistance, Inc. a Maine State Bar Association Continuing Legal Education Seminar entitled "Legal Services for the Poor: Approaches for the 1980's."

Q.1.D. What organizations concerned with the poor have you been involved in and what was the nature of your involvement?

A.1.D. During law school, I worked in the Cornell legal aid clinic and was a member of the Board of Legal Aid.

In the late 1960's, I was Treasurer, a member of the Executive Committee, and a Trustee of the Portland Regional Opportunity Program, the Local OEO Community Action Agency.

In the early 1970's, I was a member and then Chairman of my church's Board of Local Mission.

I have volunteered my time as a lawyer to the Cumberland County Legal Aid Clinic and Pine Tree Legal Assistance, Inc.

I have been a Trustee, board member and fundraiser for a variety of charitable, educational, and civic organizations, all of which have been involved, one way or another, with the poor.

Also see my answer to question 1.C., above.

Q.2.A. (i) Are you familiar with the legal services programs operating in your own community?

A.2.A. (i) I am somewhat familiar with the operation of the legal services programs in Maine.

Q.2.A. (ii) If so, describe the basis for this familiarity and your general views regarding such programs.

A.2.A. (ii) See my answers to questions 1.C. and 1.D. above. Additionally, I have made myself more aware of the programs following my appointment in December.

I am generally supportive of the program here in Maine but believe there exists an institutional bias in favor of the staff-attorney approach which is only gradually breaking down. Especially in a rural state like Maine, I believe that staff supported Judicare and Bar supported pro bono programs should be vigorously encouraged.

Q.2.B. Would you please comment briefly on the extent to which you believe that the need for legal services is being met -- both in your own community and nationally?

A.2.B. I believe that the need for legal services for the poor is probably not being met anywhere in this country. My sense is that private attorneys can and should be encouraged to play a substantially more active role in the provision of legal services.

Q.3. Under what circumstances, if any, do you feel it would be appropriate for a member of the Legal Services Corporation Board to interfere with a case being handled by a program's staff attorneys?

A.3. Never.

Q.4.A. (i) Do you believe that it is appropriate for the legal services attorneys to litigate against state governments or federal agencies?

A.4.A. (i) Yes.

Q.4.A. (ii) If not, why not?

A.4.A. (ii) Not applicable.

Q.4.B. If a client's rights are being, or may in the future be, violated by the actions or proposed actions of a governmental agency, do you believe it appropriate for legal services programs to seek to have the agency's policies or regulations changed through non-adjudicatory advocacy before that agency?

A.4.B. Yes.

Q.5.A. Do you believe that legal services programs should provide the full spectrum of professional representation to the clients they represent?

A.5.A. As long as the client is in charge and the lawyer is acting within ethical canons and any restrictions imposed by Congress, yes.

Q.5.B. What aspect of professional representation do you believe should be denied to low-income clients and why?

A.5.B. Subject to the same qualifications as above, a low-income client should have access to the same type of professional representation as any client.

Q.6. Do you believe that a legal services lawyer funded by the Corporation should vigorously pursue cases against the federal government that he or she believes are meritorious, even if they embarrass the government or arouse people in Congress?

A.6. Yes.

Q.7. Do you agree that it is a legal services attorney's right and responsibility, in consultation with his or her client, to select the forum, remedy, and strategy which is most appropriate to his or her client's needs?

A.7. I believe it is the client's right to select and to have his or her attorney employ the most appropriate forum, remedy, and strategy for his or her needs.

Q.8.A. Do you agree that Board members must avoid any conflict of interest or appearance of conflict of interest, even if not strictly within the proscription of the Legal Services Corporation Act?

A.8.A. I agree that a Board member must avoid any conflict of interest and I would do so. Avoiding an appearance of a conflict is sometimes more difficult because what appears to be a conflict to one may not appear to be a conflict to another. Where possible, the injunction to avoid even the appearance of a conflict should be followed. However, Board members should be able to make full disclosures of their concerns and then rely on General Counsel's advice as to whether they should participate in a given decision.

Q.8.B. Would you take whatever steps are necessary to remove yourself from any conflict of interest -- or appearance of a conflict of interest -- even in those instances which do not technically fall under the Act's proscriptions?

A.8.B. I would take whatever steps are necessary to insulate myself from any conflict situation. Where there is some question as to the existence of a conflict, I would seek counsel from the Corporation's General Counsel. I would follow the advice of the General Counsel to the effect that there was a conflict. I might not participate even if General Counsel opined that there was no conflict.

Q.8.D. Do you now represent, or have you represented, or are you associated in any way with any organization which represents or has represented any client in litigation or negotiations against a party represented by a legal services attorney? If so, describe the nature of such litigation and its current status.

A.8.D. Except for one case handled over fourteen years ago in which I represented a landlord against a tenant represented by Pine Tree Legal Assistance, Inc., I do not recall any other cases in which a legal service attorney represented a party adverse to a client of mine. However, I am a partner in a law firm with over thirty-five lawyers. I am advised that some of them have handled matters in which a legal services attorney was representing interests adverse to their clients. Exhibit A attached hereto is a summary of their responses to this question.

Q.9.A. What role do you think clients of legal services programs should have in the operation of local programs?

A.9.A A client should be in charge of his or her case. I am aware that the Act requires that clients have a substantial representation on local boards, § 1007(c), and that as such they have a voice in those decisions made by local boards, including the setting of priorities. § 1007(a)(2)(c). Board members, as such, should have no involvement with individual cases.

Q.9.B. What role do you believe clients should have in the activities of the national board?

A.9.B. The role of a client Board member should be the same as any other Board member. A program designed to provide legal services to the poor can learn and profit from the experiences of the poor.

Q.10.A. What should be the criteria for screening candidates for replacement of Mr. Bradley as permanent president of the Corporation?

A.10.A. We have established that in addition to the statutory requirement of a law degree and membership in the Bar of the highest court of a state, that the next President should have extensive experience and demonstrated ability in management and administration; experience in dealing with Congressional agencies and other grant-making entities and familiarity with legal services or public interest law practice. I believe that the next President must fully support the goals and objectives of the Corporation and be committed to insuring that the poor have advocates and access to our system of justice. The President must be a person of unquestioned integrity and judgment.

Q.10.B. Would you actively oppose a candidate with a record of antagonism to the legal services program?

A.10.B. Yes.

Q.11 The Legal Services Corporation Act provides that the Board of Directors should include eligible clients and should be generally representative of the organized bar, attorneys providing legal assistance to eligible clients, and the general public; the legislative history further elucidates this latter category to include persons representative of organizations involved in the development of legal assistance for the poor, the academic legal community, women, and minority groups.

Q.11.A. Which of these categories do you feel you are representative of? Please explain the basis for your answer.

A.11.A. As a member of the Cumberland County, Maine State, and American Bar Associations, and as an attorney who has provided legal assistance to eligible clients, I consider myself to be someone who is "generally representative of the organized bar" and "attorneys providing legal assistance to eligible clients, and the general public." To the extent that the above Bar Associations have been involved in the development of legal assistance for the poor, I might also be considered a "representative of organizations involved in the development of legal assistance for the poor."

Q.11.B.(i) Do you feel the nominees submitted to the Senate, taken as a whole, reflect the composition of the Board intended by the Congress?

A.11.B (i) Yes.

Q.11.B.(ii) If not, what groups do you feel are not represented?

A.11.B.(ii) Not applicable.

Q.12. How much time would you be prepared to commit during your term to the business of the Legal Services Corporation?

A.12. I would agree to spend whatever time is necessary.

Q.13. What other commitments do you have that will affect the time you may devote to the business of the Corporation?

A.13. I am a partner in the law firm of Verrill & Dana, Chairman of my local school board, a trustee of Westbrook College, a trustee and Vice Chairman of the Board of the Portland School of Art, Finance Chairman of Citizens for Emery, and a director of several family corporations. I am married and the father of three teenage boys.

Q.14.A. Will you have time and do you intend to visit various legal services programs to learn how they operate and what problems and needs they have?

A.14.A. Yes.

Q.14.B. How much time do you plan to devote to such visits?

A.14.B. At this time, I do not know.

Q.15.A. Do you agree with the stated objective of the Act to keep the Legal Services program independent of political influence and control?

A.15.A. Yes.

Q.15.B. Do you agree that the independence of the legal services program from political influence and control is critical to its carrying out its statutory mission? Why?

A.15.B. Yes, because the business of justice should not be subject to partisan disruptions.

Q.15.C. What steps will you personally take to maintain the independence of the Corporation from political influences?

A.15.C. I will carry out my responsibilities without regard to partisan political considerations; in our deliberations and actions, I will be governed by the statute and my personal convictions, rather than the desires of the Administration or Congress (except to the extent those desires are reflected in law).

Q.16 Do you have any reservations about supporting the letter and spirit of any provisions of the Legal Services Corporation Act? If so, explain.

A.16 I have no reservations about supporting either the letter or the spirit of any provisions of the Legal Services Corporation Act.

Q.17.A. Have you made any speeches, statements, or communications with any public agencies, media, or legal services programs which reflect your basic position on legal services for the poor and/or the Legal Services Corporation? If so, please provide copies of such materials.

A.17.A. I am unaware of any such "speeches, statements, or communications."

Q.17.B.(i) Were you asked to participate in any efforts during the past year either to continue or abolish the Legal Services Corporation?

A.17.B.(i) I may have been asked by the Conservative Caucus to become a member of that organization.

Q.17.B.(ii) By whom were any such requests made and what, if any, action did you take in response to any requests?

A.17.B.(ii) I did not respond to the request.

Q.18 President Reagan has recommended abolition of the Legal Services Corporation. With respect to this recommendation -

Q.18.A. Are you committed to opposing the abolition of the Legal Services Corporation? If not, why are you accepting this nomination to the Board of Directors?

A.18.A. I am commited to the goals of the Legal Services Corporation. If it can be established that those goals can be achieved without federal support, I would not oppose the loss of federal support. In my opinion, the case for abolition has not been made by those proposing it. I do believe that the provision of legal services for the poor is a responsibility of my profession and all levels of government. The federally funded staff attorney prototype espoused and promoted by the Legal Services Corporation has, I believe, pre-empted other private and governmental solutions. I believe that the near monopoly of the staff approach should give way to a creative partnership between all levels of government, the private Bar and staff attorneys.

Q.18.B. In relationship to your nomination, have you made any commitments with regard to your position on the question of abolition of the Corporation?

A.18.B. No.

Q.19 Please discuss the nature and timing of your contacts with White House personnel or other representatives of the Administration regarding your nomination and specifically what discussions occurred regarding your position on (A) President Reagan's recommendation that the Corporation be abolished, and (B) the appointment of a temporary or permanent President or any other officer of the Corporation.

A.19 During the campaign of 1980, I was President Reagan's Chairman for the State of Maine for both the primary and general election. Following the election, my advice has been sought on personnel matters with regard to Maine citizens seeking federal employment or service. In that capacity, shortly after the November election, I recommended myself for a position on the Legal Services Corporation Board of Directors. During 1981, I recall being encouraged by friends in the Administration to choose another board or commission, because they believed that the Administration's recommendation of zero funding would be supported by the Congress. I remember saying on several occasions that I did not believe that the recommendation would be adopted by the Congress and that I would, therefore, be patient.

There have been no discussions between the White House and myself regarding abolition of legal services or the appointment of a temporary or permanent President of the Corporation. I met Mr. Caplan in William Olson's law office February 20 of this year. Mr.

Caplan, who is a friend of William Olson and who has had substantial Washington experience, had agreed to consult with the new Chairman and the new Board. I was impressed by Mr. Caplan's judgment, maturity, and experience and his grasp of the challenges facing us. After Chairman Olson asked me to chair the Presidential Search Committee, I concluded that we should seek a temporary President who was not a candidate for the permanent job so that he or she could take advantage of the substantial experience that President Bradley had to impart while he was still in the Corporation's employ. I recommended to Chairman Olson and subsequently to Chairman Harvey that Mr. Caplan should be retained as that temporary or interim President. At some point during the process, I became aware that Mr. Caplan had at least one friend in the Counsel's Office at the White House.

I do not think it would be appropriate for the Board in any way to defer to Congressional or Presidential judgment as to the person or persons that we select to lead the Corporation. However, I do think it is appropriate to seek from Congress and the Administration, as well as the organized Bar and organizations concerned with legal services and from the general public, the names of potential candidates. We are in the process of seeking names and recommendations from others, but as of this time we have not formally requested any recommendations from Senators, Congressmen, or members of the Administration. May I say that within the context of our responsibilities and our need to be independent, recommendations at this time from any and all sources would be most welcome.

Q.20.A. What is your position on the appropriateness of the White House participating in, or actually deciding upon, the selection of the President or any other officer of the Corporation?

A.20.A. See my answer to the previous Question. It would be inappropriate for the White House to have any role in the decision-making process leading to the selection of the President or any other officer of the Corporation. I do not think it would be inappropriate to ask members of Congress and the Administration to recommend names for our consideration at an early stage of the process. Before doing so, however, I would seek guidance from the General Counsel of the Corporation.

Q.20.B. Do you plan to discuss with White House personnel or other Administration representatives such personnel decisions to be made by the Board of Directors?

A.20.B. Except in the context of developing the largest possible pool of prospective candidates, and subject of the qualification set forth above, the answer is no.

EXHIBIT A

One attorney has represented a school board in several cases in which Pine Tree Legal Assistance, Inc. has represented students and/or students' parents.

One attorney represented a town which was enforcing a law which Pine Tree, on behalf of a client, attempted to have declared unconstitutional.

One attorney represents employer clients defending unemployment compensation claims which were brought by claimants represented by Pine Tree. That attorney also served on the Pine Tree Board of Directors in the recent past.

One attorney represented a bank in a foreclosure proceeding in which the property owner was represented by Pine Tree.

One attorney represented another bank in a foreclosure action in which one of the stockholders of the mortgagor was represented by Pine Tree.

One attorney has represented industrial clients in electric rate proceedings in which Pine Tree has appeared on behalf of residential clients. That same attorney has represented a utility in rate proceedings in which Pine Tree has appeared in opposition to rate requests.

Several attorneys have appeared before various legislative committees and taken positions on bills in opposition to positions being espoused by Pine Tree.

There may be other cases of which I am not now aware in which one or more of our firm's lawyers have appeared in opposition to Pine Tree.

HOWARD H. DANA, JR.

ANSWER TO QUESTIONS BY SENATOR HAWKINS

Q.1. What do you think of this (Florida) proposal as an alternative for financing legal aid to the poor?

A.1. The Maine Bar Association is also considering the Lawyer Trust Fund concept. I have supported and do support the concept. It is far too early, in my view, to know whether this funding vehicle will generate sufficient resources to provide adequate access to our judicial system for our Nation's poor.

Q.2. Do you feel that this system should be mandatory to assure stable funding?

A.2. No.

Q.3. Do you feel that this legal interpretation (concerning illegal aliens) is circumventing Congressional intent?

A.3. Based upon my brief review of the matter, it certainly would appear to be an attempt to frustrate Congressional intent.

Q.4. Do you feel that this additional duty (to affirmatively ascertain a client's eligibility before services are rendered) is necessary to prevent LSC attorneys from circumventing the intent of the law by intentionally not asking whether the client is legally in the U. S.?

A.4. I would hope that the Board of Directors of the Legal Services Corporation could, through regulations, implement Congressional intent. I believe that the Board should affirmatively require legal service funded agencies to establish and to document that those persons being served actually qualify for the services being rendered.

ANSWERS OF HAROLD R. DeMOSS, JR., NOMINEE FOR THE BOARD OF DIRECTORS OF THE LEGAL SERVICES CORPORATION TO QUESTIONS PROPOUNDED BY SENATORS KENNEDY, RANDOLPH, PELL, EAGLETON, RIEGLE AND METZENBAUM

May 3, 1982

1. Republican.

2. I have had a luncheon meeting with the Executive Director and the Chairman of the Board of the Gulf Coast Legal Services Corporation which operates in the Houston Metropolitan area and surrounding counties during which they briefed me on their view of the program operated by Gulf Coast Legal Services Corporation. I have not personally visited the offices of Gulf Coast Legal Services Corporation, but intend to do so as soon as I am confirmed. I also plan to have meetings with and visit other legal services organizations here in the State of Texas during the summer.

3. I have read a substantial amount of literature furnished to me by the Legal Services Corporation regarding the needs of eligible clients.

4. I believe that the $241 million appropriated for FY 1982 will permit the Corporation to satisfy the need for legal services for the poor at a minimum or "safety net" level. I do not favor any further reductions in this amount for FY 1983. Until the Congress comes up with a plan for reducing the federal deficit and until the U. S. economy starts a recovery from the present recession, I do not believe additional funding for the Corporation over the $241 million level is a high priority item. As a matter of semantics, neither the $241 million appropriated for FY 1982 nor the $265 million requested for FY 1983 is "adequate to meet the need of legal services for the poor" if the total universe of all poor people and the total universe of all possible needs for legal services are expected to be met. However, I personally do not believe that the federal government should ever be expected to fund the Legal Services Corporation at a level sufficient to meet these "total universe" needs.

5. In view of the minimum funding level at which the Corporation is presently operating, I believe "cost effectiveness" should be the standard by which all programs and activities of the Corporation are evaluated and that a maximum effort should be made to insure that the highest percentage of every dollar goes for the actual provision of legal services to the poor. I have no specific ideas at this time as to statutory or administrative changes that would effect any such savings. An essential aspect of cost effectiveness analysis is a determination of priorities; and it is possible that some types of legal services work should be undertaken only on an "if funds available" basis; but I have no specific recommendations at this time as to those matters of priorities.

6. I favor the restrictions contained in the existing act and in H.R. 3480 on areas of legal services attorneys' activities.

7. As contemplated by H.R. 3480, I do not believe that legal services attorneys should initiate class actions against local, state or federal governments. Otherwise, I have no reservations regarding legal services attorneys suing local or state governments or the federal government.

8. I disapprove of local legal services program handling cases which are not permitted under the statutory authority.

9. I am fully committed to the concept of political independence for the Corporation. However, I believe that with "political independence" comes the obligation of political neutrality and noninvolvement which is so readily apparent from numerous provisions in the Legal Services Corporation Act prohibiting a wide variety of activities which would fall under the general heading of "political in nature". I also believe it is incumbent upon the Legal Services Corporation to do its utmost to see that grantees of the Corporation maintain a similar posture of political noninvolvement and neutrality.

10. In the spring of 1981 I advised both the Vice President and the White House Chief of Staff that I would be interested in serving in a part-time capacity on any board or commission of the federal government where they felt my background and experience would be of

service to the new Administration. In the fall of 1981 I received a call from the Administrative Assistant for the Vice President asking whether I would be interested in serving on the Board of the Legal Services Corporation, and I responded that I would. Later on that fall I received various telephone calls from personnel in the White House Office of Personnel advising that my name was under consideration for appointment to the Legal Services Corporation Board and subsequently in regard to completing the necessary forms and applications for processing my nomination. In the middle of January of 1982 I was advised by personnel in the White House Office of Personnel that the President intended to appoint me as a recess appointee to the Board of the Legal Services Corporation and to submit later on my name to the Senate for confirmation. In the latter part of January and February, I had various telephone conversations with Bill Olsen, who was then serving as Chairman of the newly appointed Board, regarding possible dates for meetings of the new Board.

11. No, see more complete answer to question 10.

12. Nothing.

Harold R. DeMoss, Jr.

ANSWERS OF HAROLD R. DeMOSS, JR., NOMINEE FOR THE BOARD OF DIRECTORS OF THE LEGAL SERVICES CORPORATION TO QUESTIONS POSED BY SENATOR EAGLETON

May 3, 1982

1. In my view, the words "full access under law to comprehensive and effective legal services" have relatively little meaning standing by themselves. In the context of delivery of legal services to poor people, these words mean that an individual (subject to the qualifications defined by law) would be able to receive (subject to the limitations defined by law) competent legal advice and representation in court proceedings regarding claims and rights of such individual (subject to limitations defined by law).

2. I do not believe that legal services programs should provide representation in lobbying activities before a state legislature, local governmental agencies or the Congress of the United States. Otherwise, I believe legal services programs should provide full professional representation to an individual client in any lawsuit which contests the validity of any state or local statute or ordinance or the decision of any administrative agency or executive official.

3. I do not agree that the provisions of the Legal Services Corporation Act require that there be no interference with a legal services attorney's professional responsibilities. The Act itself is replete with numerous provisions which restrict the type of clients, limit the type of cases and require the establishment of priorities in the handling of cases, all of which provisions may and should interfere to some extent with a legal services attorney's professional responsibilities.

4. I not agree that any guidelines established by the Corporation must be grounded on the principal that there can be no interference with a legal services attorney's professional responsibilities. As indicated in the answer to the previous question, the Act itself

requires some restrictions and limitations which the guidelines of the Corporation must implement.

5. I believe that under the Act the Legal Services Corporation and local programs are intended to be politically independent and therefore, insulated from political interference. However, as I read the Act, the price of political independence is that the Legal Services Corporation and local programs should be politically neutral and uninvolved in political activities.

6. To the extent of resources available to them from private sources, each local program is free to establish such priorities as it may deem appropriate. To the extent of funds received from the Legal Services Corporation, I believe maximum flexibility should be given to the local programs to establish their own priorities but subject, however, to the right of the Legal Services Corporation to establish national priorities pursuant to the terms of all grants and contracts issued to the local programs.

7. I cannot conceive of any circumstances under which it would be proper for an individual member of the Board of Directors of the Legal Services Corporation to interfere in the professional representation provided by a staff attorney to an eligible client.

8. In the 1960s, I was a participant in the Houston Lawyer Referral Service and the Houston Legal Foundation, which were local programs directed by the Houston Bar Association to provide low-cost or no-cost legal representation prior to the commencement of the federal programs. My best recollection is that I represented approximately ten individuals in these programs.

9. No.

10. I believe that the program established by the Legal Services Corporation Act is a worthwhile and needed function of the federal government, is in the national interest, and should be continued. I believe that the poor (subject to the eligibility limitations defined by the Act) should have access (subject to funding limitations established by Congress) to competent legal

counsel and representation in suits relating to individual claims and rights (subject to the limitations defined by the Act).

11. I have seen neither the transition report on the Legal Services Corporation nor any purported summary thereof; but without regard to whether the topics inquired about in this question are or are not mentioned in the transition report, I have the following comments:

    (a) I do not believe a governor should be given veto power over all grants made by the Legal Services Corporation within his state;

    (b) I do not believe the Legal Services Corporation should be decentralized by creating regional or state corporations;

    (c) I do not favor giving grant-making authority to the regional offices of the Legal Services Corporation; and

    (d) I do not have an opinion for or against requiring clients to pay part of the cost of representation.

Harold R. DeMoss, Jr.

ANSWERS OF HAROLD R. DeMOSS, JR., NOMINEE FOR LEGAL SERVICES CORPORATION BOARD OF DIRECTORS, TO QUESTIONS OF SENATOR PAULA HAWKINS

April 19, 1982

1. Other than the information set forth in your memorandum, I do not have any first-hand knowledge as to the plan of the Florida Bar Association relating to financing legal assistance to the poor. Particularly, I am not sure I understand the source of the short-term escrow accounts from which the interest income is used for these purposes. However, the Florida plan certainly sounds worthwhile and I would certainly encourage the implementation of private programs such as this. For the time being, though, I would think a private program such as this should be looked upon as "supplements to" rather than "alternatives for" the federally funded Legal Services Corporation programs.

2. I am not familiar with the "mandatory plan" being considered by the State of California. Without further details and as a matter of general philosophy, I would prefer voluntary plans to mandatory plans.

3. I would read the restriction adopted by the 96th Congress in the Appropriation Bill as intended to be a prohibition against LSC attorneys representing illegal aliens. However, I have not personally researched the legislative history of this restrictive provision and it is possible that the opinion issued by the general counsel of the Legal Services Corporation is based on matters in the legislative history reflecting an intention that an individual would be "known to be an alien in violation of the Immigration and Nationality Act" only when so determined by a final deportation order. I am also aware that the lower federal courts have been considering the rights of the illegal aliens in various context, i.e., the right of their children to attend public schools; and it is possible that there is judicial interpretation from these other contexts as to when an individual is "known to be an alien". In the absence of express legislative intent in the

legislative history or such judicial interpretations, I would feel that the legal interpretation given by the General Counsel of the Legal Services Corporation to this language is more restrictive than the Congress intended from the words used.

If the Congress intends that funds distributed through the Legal Services Corporation be used solely to provide legal services for citizens and for nationals lawfully within the United States, then the amendment proposed by the House of Representatives to place an affirmative duty upon LSC attorneys to ascertain a client's eligibility before services are rendered would certainly be appropriate. However, from a practical and operational standpoint, I do not think this determination of eligibility status should consist of anything more than requiring the prospective client to affirm under oath that he is either a citizen of the United States or a foreign national lawfully within the United States because otherwise many individuals who are, in fact, citizens of the United States could be denied representations simply because of the unavailability of or difficulty in securing documentary evidence such as birth certificates and naturalization papers to establish their eligibility status.

Respectfully submitted,

Harold R DeMoss

Harold R. DeMoss, Jr.

ANSWERS OF HAROLD R. DeMOSS, JR., NOMINEE FOR LEGAL SERVICES CORPORATION BOARD OF DIRECTORS, TO QUESTIONS OF SENATOR ALAN CRANSTON

April 19, 1982

1. A. I am willing to serve on the Board of the Legal Services Corporation solely because I believe every citizen has a responsibility to make available some portion of his time and talent in public service areas. I can contribute to the Legal Services Corporation the experience gained from twenty-five years of practicing law and engaging in a variety of bar association activities, a reasonably sharp mind, a willingness to work and a commitment to try to practice the second Great Commandment.

B. To manage and direct the affairs of the Legal Services Corporation pursuant to the Legal Services Act and the rules and regulations adopted by the Board of Directors.

C. I have provided representation for indigents in both civil and criminal cases through the Houston Legal Foundation, a private agency which operated prior to the adoption of the Legal Services Corporation Act. I am currently a member of Houston Pro Bono Services, a private organization designed to provide civil representation to the poor.

D. None.

2. A. (i) Yes.

(ii) I have been briefed by both the Chairman of the Board and the Executive Director of the Gulf Coast Legal Services Corporation. In my view, this organization is providing competent representation on a cost effective basis to the extent of its funding resources.

B. In the area served by the Gulf Coast Legal Services Corporation, I believe legal services for the poor are being met at a minimally adequate level. On the national level, I have only preliminary impressions to go on, but I believe this same standard is being achieved. In both areas, I feel that there is a role to be played in the future in meeting this need by programs funded and operated by local and private resources as well as the federal program operated through the Legal Services Corporation.

3. I cannot conceive of any circumstances under which it would be appropriate for an individual member of the Board of the Legal Services Corporation to interfere with a case being handled by a staff attorney.

4. A. (i) Yes.

(ii) N/A

B. Yes.

5. A. I am not sure I know what you mean by the words "the full spectrum of professional representation". I certainly believe that within the limits specified by the Legal Services Act and the rules and regulations adopted by the Board of Directors, a legal services program should provide competent and complete legal advice and representation in judicial proceedings.

B. None, other than what may be proscribed by the Act or rules and regulations adopted by the Board.

6. I believe a legal services lawyer should vigorously prosecute any case which he undertakes believing it to be meritorious without regard to any embarrassment or antagonism such case might generate in government or Congress. I do not believe legal services lawyers should "pursue" in the sense of "soliciting" or "seeking out" such cases.

7. Yes, but subject to review and approval by the local program director who would, I hope, make sure that such decisions were reasonable from a cost effectiveness standpoint.

8. A. Yes.

   B. Yes.

   D. (i) N/A

      (ii) No.

      (iii) Yes, if requested by a client of the firm.

      (iv) Nothing, in connection with isolated cases occurring on an irregular basis. Should a significant volume or series of cases develop, I would turn over representation of such matters to other lawyers in my firm.

9. A. I think clients should have some representation on the Boards of Directors of local programs and should participate through advisory groups in recommending ways in which local programs could be improved.

   B. Same answer.

10. A. The criteria for selecting a new president of the Legal Services Corporation should be:

    (a) Law degree and membership in the bar of the highest court of a state;

    (b) Extensive experience and demonstrated ability in management and administration;

    (c) Experience with Congress, federal agencies or other grant-making entity; and

(d) Familiarity with legal services or public interest law practice.

B. If by "antagonism", you mean a fundamental bias against the concept of the federal government providing legal services for the poor, my answer is yes. I reserve the right to support a candidate, however, who may have new, different, fresh and better ideas as to how to make the federal program more effective and efficient, even though implementation of such ideas would result in changes in the way things have been done in the past.

11. A. I represent the organized bar by reason of the fact that I am licensed to practice before the Supreme Court of the United States, the U. S. Court of Appeals for the 5th Circuit, the Supreme Court of Texas and all trial courts in Texas, and I am a member of the American Bar Association, the Texas Bar Association, the Houston Bar Association, the Texas Association of Defense Council, the Maritime Law Association of the United States and the International Bar Association. I represent the general public by reason of the fact that I am a citizen, voter and taxpayer.

B. (i) Yes.

(ii) N/A

12. I am prepared to commit such time on a part-time basis as is necessary to perform my duties as a member of the Board of Directors of the Legal Services Corporation.

13. I have commitments to clients, my fellow law partners, my family, my church and various civic organizations which may affect the time I can devote to the Corporation.

14. A. Yes.

B. I will devote such time to these visits as the Board of Directors determines is necessary and appropriate.

15. A. Yes.

B. Yes, because without such independence, the statutory mission may be adversely affected by pressures not only from Democrats and Republicans in the Congress, the White House and State governments, but also from private special interest groups representing recipients, staff attorneys and clients.

C. All the steps which I deem necessary to assure that each vote which I cast as a member of the Board of Directors has the best interest of the Corporation in mind on the basis of the factual information and reports available to me.

16. No.

17. A. No.

B. (i) No.

(ii) N/A

18. A. It is my personal belief that the legal services program administered by the Legal Services Corporation serves a needed and worthwhile function and should be continued until other methods of providing legal representation for the poor are in place and adequately funded. However, the decision as to whether or not the Legal Services Corporation should be abolished as well as the level of funding to be provided each year to the Legal Services Corporation are both political decisions as to which it would be inappropriate (and probably statutorily prohibited) for me to take an active role in influencing the outcome of such decisions.

B. No.

19. In the spring of 1981 I advised both the Vice President and the White House Chief of Staff that I would be interested in serving in a part-time capacity on any board or commission of the federal government where they felt my background and experience would be of service to the new Administration. In the fall of 1981 I received a call from the Administrative Assistant for the Vice President asking whether I would be interested in serving on the Board of the Legal Services Corporation and I responded that I would. Later on that fall I received various telephone calls from personnel in the Office of White House Personnel advising that my name was under consideration for appointment to the Legal Services Corporation Board and subsequently in regard to completing the necessary forms and applications for processing my nomination. In the middle of January of 1982 I was advised by personnel in the White House Office of Personnel that the President intended to appoint me as a recess appointee to the Board of the Legal Services Corporation and to submit later on my name to the Senate for confirmation. At no time during any of these contacts were any discussions held regarding my position on (a) President Reagan's recommendation that the Corporation be abolished or (b) the appointment of a temporary or permanent president or any other office of the Corporation.

20. A. I do not think it would be appropriate for any personnel in the White House to participate in or actually decide upon the selection of the President or any other officer of the Corporation.

B. No.

Respectfully submitted,

Harold R. DeMoss, Jr.

CONTACT: Pepper & Corazzini
(202) 296-0600

STATEMENT OF

CLARENCE V. Mc KEE, ESQ.

Before The

COMMITTEE ON LABOR AND HUMAN RESOURCES
UNITED STATES SENATE
April 21, 1982

CHAIRMAN HATCH AND MEMBERS OF THE COMMITTEE:

My name is Clarence V. McKee. I am of Counsel to the Washington communications law firm of Pepper & Corazzini and nominee of the President of the United States to be a Member of the Board of Directors of the Legal Services Corporation.

I wish to express my deep appreciation to President Reagan for his trust and confidence in nominating me to this most honorable and important position. I wish to assure him and all of you of my deep and sincere commitment to the faithful execution of my duties and responsibilities under the Legal Services Act, to wit, the provision of high quality legal services to those who would otherwise be unable to afford such assistance.

I feel that I am well prepared to assume these duties and undertake the responsibilities as a Director due to my background and experience. For nearly all of my professional life, my work either directly or indirectly has been related to seeing that equal access, opportunity and justice is afforded to all of our citizens. I am most honored to have had the opportunity, over 13 years ago, to have worked for Senator Jacob K. Javits here in the Senate during a period when much of the planning and groundwork for the present legal services program was being developed. It was through his hard work and that of other members of the Senate and the House that the present program was established.

Prior to my experience with Senator Javits, I had served under then Vice President Hubert Humphrey on the President's Council on Youth Opportunity where I worked with Mayors, Governors and local businessmen assisting them in developing job programs for disadvantaged youths. While a law student at the Howard University School of Law here in Washington, an institution noted for its special commitment to training lawyers to utilize the legal system to vindicate the rights of the poor and the oppressed, I served as an assistant to attorneys in a local neighborhood legal services office. And, finally, just prior to my entering the private practice of communications law, I spent several years at the Federal Communications Commission where my work included assisting in the drafting and implementation of affirmative action guidelines to assure that women and minorities had equal employment and access in the broadcasting industry at all levels.

Throughout my career, I have maintained and continued my commitment to the concept of the equal justice under law, fundamental fairness and to the view that a person's economic plight, color, race, sex or religion, cannot and must not serve as an artificial barrier to receiving the full benefits of our system of justice under our Constitution. It is with this commitment that I come before this Committee as President Reagan's Nominee to the Board of the Legal Services Corporation.

I would be pleased to respond to any questions.

RESPONSES OF NOMINEE CLARENCE V. McKEE

Minority member Questions

1. Republican

2. I have read volumes of information from the Corporation regarding its programs, grants, budget, and related activities and efforts. I have personally visited legal services programs in Louisiana and Texas subsequent to my nomination. I certainly will continue to visit programs throughout this country so as to acquaint myself with the day-to-day problems and concerns of local projects as they relate to the national goals and objectives of the program.

3. Almost my entire professional career has been involved in the works and efforts concerning the needs, hopes and aspirations of persons who could be considered eligible clients of the Legal Services Corporation. My efforts with the Neighborhood Youth Corps in Rochester, New York in 1965, with the President's Council on Youth Opportunity in 1968, my continuing efforts to work with and be involved with areas of concern related to the needs and problems of poor people in the United States, make me well acquainted with the various problems of persons who would be eligible clients of the Corporation today. In addition, I served in 1965 with a legal services program in Washington, D.C. while I was in law school.

4. It is most difficult to estimate the total amount of money needed to meet the legal services needs of the poor people of the United States. Just as the $321 million initially requested for F.Y. 1982 was most likely inadequate to meet the total poor people population in this regard, I am certain the amount requested for 1983 of $265 million is not adequate to meet that need. It is for this reason that all avenues for additional and alternative sources for funding must be explored if we are to meet the total needs in this country in this regard.

5. I am still in the process of reviewing the entire aspects of the Corporation's activities including budgetary responsibilities, cost effectiveness of various efforts, and utilization of present and past funds by the Corporation's grantees and contractors. Hence, at this time I am not in a position to give a specific comment of recommendation as to what savings and funds could made through statutory or administrative changes. However, as Chairman of the Board's Special Committee on Grants and Contract Procedures, I intend to review all of these areas and would be pleased to inform you and the committee of my suggestions, if any, after my report to the Board. As to the need for halting certain types of legal services by attorneys for cost effective purposes, my answer would have await my review

of the entire spectrum of legal services attorneys' work and efforts as they would relate to cost effective theories.

6. At this time, and pending full review of the entire area, I would not favor restricting any area of legal services attorneys' activities other than those already restricted by the statute.

7. No.

8. Because of the great variety and numbers of cases handled by local legal services programs throughout the country, I could not make a general statement as to approval or disapproval of any specific kind of case on an isolated basis. I generally feel, however, that the basic nature of legal services representation of clients should be as set forth in the statute with do regard for the basic rights and needs of individual clients.

9. I believe that the Legal Services Corporation should remain politically independent. Since I have not seen the transition report for the Corporation I do not feel that I should comment on what is alleged to be "reported" allegations regarding statements of members of the team or of that report.

10. I was contacted by the White House Presidential Personnel Office in late January of 1982 inquiring as to my interest in accepting a recess appointment by the President to the Legal Services Corporation Board. I accepted the recess appointment and subsequently indicated my agreement with being nominated by the President for a full term on the Board. Beyond that, I have had no contact with the White House on the acceptance of the position and my only contact with my fellow Board nominees has been on an organizational and procedural basis in preparation for Board meetings and for confirmation hearings.

11. No, I did not submit my name for consideration to the Legal Services Corporation Board. My contact with the White House is as set forth in my response to question number 10 above.

12. All I know about how the other Board nominees were selected is what I have heard set forth in Board meetings and in discussions with other nominees, to wit, that seven members were given recess appointments in December and the remaining three were given recess appointments in January. Subsequently, most of the recess appointees were given full Presidential nominations. Beyond this process, I know nothing of how my other Board colleagues were selected.

RESPONSES OF LEGAL SERVICES CORPORATION BOARD NOMINEE

CLARENCE V. McKEE

TO QUESTIONS OF SENATOR THOMAS EAGLETON

1. In my view, the meaning of "full access under law to comprehensive and effective legal services" means full rights and opportunity to vindicate those rights under the United States Constitution and the laws and regulations of the United States and the several states.

2. To the extent provided for in the Legal Services Act, I believe the legal services program should provide the full spectrum of professional representation as set forth in the question as long as it's related to the direct provision of legal services to the clients.

3. Yes.

4. Yes, consistent with the goals and mandates and restrictions of the statute.

5. Yes.

6. I do not believe that the specific job of the Corporation Board is to mandate or determine each local program's priorities. However, I do believe that the Board has an obligation under the statute to set the general national policy within the mandates of the Act so as to best serve the needs of the clients as intended by the statute.

7. Only to the extent that such representation would be in contradiction to a restriction, prohibition or a mandate of the Act.

8. I have not served as a member of a lawyer referral program due to my specialty in communications law. Also, due to the nature of my specialty as set forth above, I have not participated in representing poor clients at low cost or for no charge.

9. No.

10. Yes, I support these principles.

11. Pending my thorough review of all of these options and recommendations as a member of the Board, I cannot at this time indicate whether I would not support any or all of these clients.

RESPONSES OF NOMINEE CLARENCE V. McKEE
TO QUESTIONS OF SENATOR CRANSTON

1. A. I wish to serve on the Legal Services Corporation Board because I think it would be a great opportunity to serve my country and to assist in the provision of the basic and fundamental right of providing legal services to poor people of the United States. The nature of my contribution will be to utilize to the best of my ability my background and experience to implement the provisions of the statute and to understand and have a better comprehension of the various problems and needs of the program.

B. My understanding as to my duties and responsibilities as a member of the Board is to fully and to the best of my ability implement the statutory mandate.

C. My prior involvement with Legal Service's programs includes working in a neighborhood legal services office when I was a law student at Howard University School of Law in Washington, D.C. as well as working in the Senate with Senator Javits and his staff between 1969 and 1971 on the various legislative initiatives developed in this area.

D. My involvement with organizations related with poor people goes back to 1965 where I worked in the Neighborhood Youth Corps in Rochester, New York, a federal program to hire and employ disadvantaged youths for summer employment. In 1969, I served as the West Coast coordinator for the President's Council on Youth Opportunity under Vice President Hubert Humphrey where my responsibility was to work with mayors and businessmen in seven west coast cities including Los Angeles, San Diego, San Francisco, Oakland and Long Beach California in developing summer job opportunities for disadvantaged youths. In the Senate, I worked with Senator Javits and other members of the Select Committee on Nutrition and Human Needs in assisting in the development of domestic food assistance programs such as the food stamp school lunch and school breakfast programs to assist the poor people in the United States. Locally, in the District of Columbia, I have served as a member of the Board of the United Way of the District of Columbia where part of my responsibilities included helping to review funding proposals for various organizations which serve low income citizens of the District of Columbia.

2. A. (i) I am generally familiar with the District of Columbia legal services program.

(ii) My familiarity is based upon my past involvement with the United Planning Organization, the District's poverty program, as an employee of the Neighborhood Legal Services in 1965 as set forth above. My general view regarding this program is that it is much needed.

B. Based upon the statistics of having two legal services attorneys for every 10,000 poor persons, I do not feel that the need for legal services of poor people in the United States is being met. Although I am not specifically familiar with the ratio in the District of Columbia, I am certain that the above statistics break down to indicate that there is still a need for greater provision of legal services in the District.

C. I do believe that in most instances it would not be appropriate for a member of the Board of the Legal Services Corporation to interfere with a case being handled by a program's staff attorneys. However, if it were brought to my attention that a staff attorney was working on a case which was violative of the legal service statute, or was involved in activities which were harmful to the interest of his client or the program, I would certainly bring it to the attention of the appropriate corporate officials.

4. A. (i) To the extent provided for in the statute.

B. If permitted by statute.

5. A. To the extent permitted by the statute.

B. Only as denied by statute.

6. If the case is within the mandate of the statute and is for the protection or vindication of rights of a client, the fact that that suit might embarrass the government or arouse people of Congress is not a major consideration.

7. Yes, to the extent permitted by statute.

8. A. Yes, Board members must avoid conflicts of interest as set forth in the statute and the by-laws of the Corporation. Because of the delicate nature of the Board members responsibilities and the related controversy surrounding the Corporation, I would believe at this time that Board members should avoid even the appearance of a conflict of interest, after receiving advise of the Corporation's General Counsel.

B. It would certainly depend on the particular facts of the case.

D. No.

(i) Not applicable.

(ii) I would not represent such clients.

(iii) Since I serve as "Of Counsel" to a communications law firm, I do not think that this is applicable in my case.

(iv) I would certainly not be involved in any such case.

9. A. Client's roles in the operation of a legal program should be to the extent permitted by the national statute and the local by-laws of the particular program. If we were to relate a legal services program to a law firm, we would find that not many clients of law firms have a role in the management of that law firm.

B. I feel the client representatives on the national board, clients should have a role in the activities of that board. Also, organizations such as the National Clients Council should have an impact in terms of board policies at Board and Committee meetings and voice their views.

10. A. The criteria for screening candidates for Mr. Bradley's position as president of the Corporation should, as it is, include a broadly based search for a top caliber executive who is sensitive to the mission of the Corporation. An affirmative effort should be made to contact as many representative organizations of Black, Hispanic and Women's groups involved in the legal community as possible.

B. Generally, yes, however, it would depend upon the nature and basis for such antagonism.

11. A. I am a representative of the category a "member of the organized bar", "the general public", and a "minority group".

B. (i) Yes.

12. I am willing to commit as much time during my term to the business of the Legal Services Corporation as is necessary to fulfill my obligations under the statute and to the client community.

13. Other than my law practice, I have no other commitments that will affect the time I will devote to the business of the Corporation.

14. A. I will have the time and I do intend to visit various legal services programs to learn how they operate and to ascertain their various problems and needs.

B. As much time as is necessary to perform my duties and responsibilities.

15. A. Yes.

B. Yes, because political consideration should have no role or impact on the provision of fundamental and basic legal assistance to clients.

C. I will make sure that all of my judgments and decisions are based upon my own independent counsel, analysis and investigation based upon the facts of a particular matter and issue.

16. No.

17. A. No.

B. (i) No.

(ii) Not applicable.

18. A. I am committed to implementing the statute.

B. No.

19. I was contacted by the White House personnel office in mid-January asking if I would be willing to accept a recess appointment and possible subsequent nomination to the Legal Services Board. There was never any discussion with any White House personnel or anyone else regarding the recommendations on funding to the Corporation or the appointment of a temporary or permanent President or any other officer of the Corporation.

20. A. Because of the nature of the Corporation, the statute and the legislative history, it would be inappropriate for the White House to mandate the selection of any president or officer of the Corporation. However, because of the necessity and desire to have the broadest possible input on Presidential candidates and other officers of the Corporation, I would certainly want to receive recommendations from the White House, members of this Committee, Members of the Senate, the House of Representatives, the legal services community and any other organizations regarding possible candidates for any position within the Corporation.

B. Consistent with the above answer, I have no such plans.

RESPONSES TO SENATOR HAWKINS

FROM NOMINEE CLARENCE McKEE

1. The Florida Bar Association proposal is a good example of private efforts to supplement federal efforts in the provision of legal services to the poor. The extent to which such a program, if adopted in all states, would provide a viable and meaningful alternative to federal financing based upon the mandates of the existing statute is still open to exploration.

2. I would support a mandatory system to assure stable funding. It appears that such a legal interpretation does circumvent Congressional intent and I would seek an opinion from the Department of Justice on this matter.

4. Yes.

RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED BY SENATORS KENNEDY, ET AL. TO WILLIAM J. OLSON

1. Republican.

2. I have spent many hours reading publications of the Corporation discussing the grantees and contractors of the Corporation. I have read the Delivery Systems Study. I have personally reviewed the Corporation's files for the programs in Virginia and the District of Columbia. Although I have not personally visited any projects, I plan to visit several in the Washington metropolitan area in the coming weeks, if confirmed by this Committee. I will soon schedule a visit to the Legal Services of Northern Virginia and the Board's Presidential Search Committee will visit the Denver regional office, the Legal Aid Society of Metropolitan Denver, and the Native American Rights Fund in early May.

3. I have read a great deal of the literature concerning the Corporation and its service to eligible clients. I have had limited conversations with Jo Worthy and Anne Slaughter of the Corporation's Board. Through my work with service organizations and the victims movement, I have familiarity with the needs of eligible clients upon which I will build.

4. I have no conclusions as to whether the amounts of funding appropriated for FY 1982 is adequate or inadequate to meet the needs of the poor, other than to say it is usually true that demand outpaces available supply of any social service. Additionally, there has been substantial debate within government in recent weeks as to the true number of poor persons in the country. I am likewise not ready to make any conclusions concerning the proper funding level in FY 1983. As the various committees of the Board begin to study the Congressional appropriations, and we begin to understand more about how the recipients of Corporation grants work operationally, I will develop conclusions in this area.

5. One potential area of savings that I have been able to identify so far is in the area of training. In an effort to respond to cutbacks in FY 1982, the Corporation relinquished supervisory training responsibilities to five regional, LSC funded grantees, and placed primary responsibility in the hands of each grantee. It is my belief that, based on my limited experience with continuing legal education programs, substantial savings can be made through centralization. Accordingly, it is my tentative conclusion that the Corporation's response to the budget cutbacks to decentralize training was inappropriate and counter-productive. I would like to examine this very closely because I believe particularly when members of the private bar are involved, as opposed to staff attorneys, training is a very important function to be served. I also plan to take a close look at the portion of the budget which is not for the direct delivery of legal services to the poor, including state and national support centers. At this stage I simply cannot identify statutory changes to save expenses.

6. I am strongly in favor of full implementation of the Congressional restrictions on activity by Legal Services attorneys. If the Congress adopts new restrictions, I would ensure those were implemented as well. I cannot identify any further restrictions at this time that I would endorse, but would be unwilling to say that there would not be cost or other factors which would encourage me to support some restrictions at some time in the future, consistent with the Legal Services Corporation Act.

7. Currently such actions are usually permissible, unless the Congress prohibits it or curtails it in the case of class actions. I am certainly not opposed to the concept of poor persons having representation in a dispute with the government, consistent with the Act (see e.g., §1007(a)(5)), but I would be careful that at all times the cause being advanced is that of the client and not of the attorney.

8. This is a sweeping question to which an answer is almost impossible. Certainly there are certain cases which I cannot rationalize with the purpose of the Legal Services Corporation to assist the poor in legal matters. For example, a suit was initiated against a state university relating to academic freedom issues. In no way were the rights of the poor involved. Unfortunately, I am unable to give other examples at this time. My priorities would be to the provision of Legal Services to individual persons who need them before devoting scarce resources to time-consuming and expensive "impact" litigation to change governmental policy for social reasons and not legal necessity.

9. I am not sure what it means to "flaunt" the Corporation's political independence. The Corporation and the Board are either independent of the Legislative and Executive Branches of government or they are not. The Legal Services Corporation Act requires an independent Board and I will do what is in my power to ensure that it has one.

10. I had virtually no contact with anyone in the White House concerning the Corporation until late 1981 when I was told I was being considered for a position on the Board. I was asked to submit extensive background information, fingerprints, F.B.I. background search information, financial disclosure information, etc. After I provided that information I had several conversations with the White House Personnel Office concerning the potential appointment. As the year went on and the clearances were still being finalized, I informed several White House staff members of my belief (based on a conversation in December, 1981 with Dan Bradley, then President of the Legal Services Corporation) that unless action was taken on the appointments before January 1, the Corporation's president, under the authority of the old Board, would commit all 1982 grants and contract moneys. This would deprive the new Board of any meaningful role in the Corporation's spending policies until 1983. Accordingly I urged that the appointments be made prior to January 1. On December 30, I received a telephone call from E. Pendleton James, Assistant to the President for Personnel, who advised me that appointment of a new Board in December was being considered. I met with him that afternoon and strongly urged him to make the appointments so that a resolution could be adopted before January 1 which would temporarily defer approval of these 1982 grants

and contracts until a review could be made. I had other conversations with members of the White House staff on that day concerning the logistics of having a Board meeting on December 31, and the potential legal challenge to the President's recess appointments, which had been rumored in legal services circles during late 1981. Subsequent to the meeting, I have had several conversations with members of the White House Counsel's office concerning the threatened litigation, which was eventually filed, against Board members attacking the authority of the President to make these recess appointments. I also had conversations with members of the Congressional Relations staff concerning the appointment process, scheduling of the hearings, and related matters.

11. Needless to say, no member of the Board of the Legal Services Corporation could abolish the Corporation. The Corporation is created by Act of Congress and it would take an Act of Congress for it to be abolished. As a member of the Board of the Corporation, I will do my best, exercising my fiduciary duty to the Corporation, to improve its operations and ensure that its legislative mandate is carried out.

12. During the five months that I worked at the Office of Economic Opportunity during 1973, I was primarily involved with the OEO programs in the area of educational finance. I had some responsibility in the area of contract review for the Office of Program Review in which I was employed. Although I do not recall any specifically, I may have reviewed one or more contracts of the Office of Legal Services.

13. I never served as a special assistant to Mr. Phillips; I worked for one of the assistant directors in charge of the Office of Program Review. I was not involved with Legal Services at the time.

14. No.

15. I first met Marshall Boarman while at OEO in 1973. I do not recall that he worked directly for Mr. Phillips at that time. It is my recollection that he worked in the evaluation division in the Office of Legal Services. I have no knowledge that Mr. Boarman has worked with the National Defeat Legal Services Comittee. I relied on Mr. Boarman for assistance in calling members of the Board to schedule the meeting on December 31st because he worked with the Legal Services Transition Team for the Office of the President-Elect in November 1980 - January 1981.

16. Prior to that meeting, I had never spoken with any of the members of the Board who were December 1981 recess appointees, with the possible exception of Clarence McKee whom I recall having met through various Republican Party activities. The only contact came when I called them to schedule the December 31st Board meeting. I have always been aware that the Legal Services Corporation Board is under the jurisdiction of the Government in the Sunshine Act and our notice for this meeting complied in full with the Act's provisions concerning Board meetings taken under exigent circumstances. We provided the best possible notice to members of the Board and to members of the public prior to the Board meeting.

17. I submitted my name for consideration to the Office of the President-Elect in December 1980 or January 1981. I believe this submission was made to Loren Smith, then Assistant Director of the Transition for the Justice Department and the Independent Agencies.

18. I was not involved in the selection process of other Board nominees who were recess appointed in December 1981. Mr. Dana has told me that he requested service on the Board. I have known Anne Slaughter for some time, having served with her on the Board of the Victims Assistance Legal Organization (formerly Crime Victims Legal Advocacy Institute), and I was strongly supportive of her selection to the Board.

RESPONSES OF WILLIAM J. OLSON TO GENERAL QUESTIONS FROM SENATOR EAGLETON

(I have labeled each question set off by hyphens alphabetically.)

A. When the government establishes a dispute resolution mechanism, a court system, it is essential to ensure access to that system of justice for all persons. In many cases, most especially litigation, assistance by an attorney is essential to have effective access to that system.

B. It is difficult to understand what a "full spectrum" of professional representation is in an era when attorneys perform services which have not been historically viewed as "legal." It is my belief that the Legal Services program was designed to promote representation for the poor first and foremost where attorneys are most essential -- in litigation. Beyond that, I would follow the dictates of the Act and any subsequent amendments with regard to the priorities which would be set or the restrictions which now exist and may in the future be imposed.

C. Section 1006(b)(3) states "the Corporation shall not, under any provision of this title, interfere with any attorney in carrying out his professional responsibilities as established in the Canons of Ethics and the Code of Professional Responsibility of the American Bar Association..."

D. Clearly the Board must scrupulously follow this and all other provisions of the Legal Services Corporation Act. It would be wrong to compel an attorney whether funded by a Corporation recipient or not, to violate his responsibility to his profession.

E. The findings set out in the Legal Services Corporation Act require that the Legal Services program be kept free from the influence of or use by it of political pressures. Of course, the Board also has the responsibility of implementing an act which requires certain restrictions be placed upon the activities of local programs. It is important to enforce the restrictions of the Act but certainly this would not be done and should not be done in a partisan manner.

F. The question of priority setting is a very difficult one. The Act requires that the Corporation ensure that recipients adopt procedures for determining and implementing priorities. It would seem to me that there are certain types of priorities which must be set at the local level with regard to local circumstances. I also believe, though, that there is an important role for the Corporation's Board in setting priorities for the Corporation as a whole. This is particularly true when funding for the Corporation is diminished.

G. I believe that the Board must avoid the type of interference discussed in section 1006(b)(3) of the Act. I also believe that the Board must ensure that staff attorneys are obeying the statute and regulations of the Corporation in meeting the needs of clients. There are types of professional representation that a staff attorney would wish to engage in which the Congress has proscribed or may proscribe. In this case, the statute must be enforced in an appropriate fashion, so as not to interfere with other important principles of the Act.

H. I have never served as a member of a lawyer referral program, but I have several times represented poor clients at low cost or for no charge. The policy of the firm with which I was associated for a period of years after I left law school was to ensure that no person be denied representation because he or she could not afford it. I have endeavored to carry this responsibility into my practice. I currently represent Davis Memorial Goodwill Industries on a pro bono basis in several matters, and have worked for individuals at low cost or for no charge. I have also been involved with a legal foundation concerned with the delivery of legal services to victims of crime, many of whom are poor.

I. No, to the best of my knowledge.

J. The role of attorneys providing legal assistance, whether they be staff attorneys, attorneys participating in a Judicare model, or attorneys providing pro bono services is important to the successful operation of our system of justice. The poor and all segments of our society must have effective access to our judicial processes for the system to be successful.

K. It is my belief that most of the possible options listed in this question would require Congressional legislation. I believe the concept of providing a gubernatorial veto has had a long legislative history and was rejected by the Congress in favor of allowing governors to appoint advisory boards. Further, the delegation of the Board's responsibility to regional or state corporations set up for that purpose strikes me as requiring new statutory authority. I am not aware of any plans of this sort that have been discussed on the Hill. In our recent visit to the Denver regional office, I began to learn a great deal about the role that regional offices serve in the Corporation. I believe that they provide an important link between the national office and the programs and yet I question whether providing the regions with the ultimate grant making authority is wise. Even if desirable, I am unsure as to whether this could be done without new legislation or, at minimum, changes in the regulations. And I further do not know if it would be possible, even if desirable, to ask for some nominal payment from clients in order to avoid the occasional problem of frivolous litigation being brought by clients who need not pay anything toward their own representation. This problem would have to be addressed, probably by the Congress, and certainly in a way that would ensure that those poor having meritorious cases not be deprived of their benefits under the Act.

RESPONSES OF WILLIAM J. OLSON TO QUESTIONS FROM SENATOR ALAN CRANSTON CONCERNING THE LEGAL SERVICES CORPORATION

Special Questions

1. No.

2. A. Since I was appointed to the Board of the Legal Services Corporation on December 30, 1981, I have received three or four telephone calls from Howard Phillips. The substance of these calls was to make inquiries concerning the activities of the Board of the Corporation. (On one other occasion, I called Mr. Phillips concerning a discussion my wife had had with a colleague of his unrelated to Legal Services.) I have not met with or seen Mr. Phillips personally in many months, perhaps a year or more. On one other occasion I received a telephone call from Larry Straw who I believe is associated with the Committee, regarding an article he saw in a California paper about the Corporation.

B. If confirmed, I plan to return phone calls from all persons relative to the Legal Services Corporation, as I believe I should do because I am serving on the Board of a public corporation, and also out of common courtesy.

3. No. I have analyzed and examined the arguments pro and con the Corporation as it presently exists and other alternative delivery and funding mechanisms, but I have not advocated the abolition of the Corporation and its substitution with any specific alternative.

4. A. Yes.

B. To provide for openness in government.

C. In calling the meeting of the Board on December 31, 1981 we complied with all notice and public access requirements of the law. Although the Government in the Sunshine Act and the Corporation Bylaws normally require substantial lead time on Board action (a policy which I wholeheartedly endorse) the Government in the Sunshine Act was never intended to prevent government agencies from acting when exigent circumstances arise. Government cannot be paralyzed from taking necessary actions by notice requirements. Therefore, when I called the meeting for December 31, providing the maximum notice to Board members and to members of the public that was feasible under the circumstances, I believe our actions were legal and proper.

General Questions

1. A. As an attorney, I am committed to the concept of equal justice under the law. I look forward to continued service on the Board of the Legal Services Corporation in order to further that professional and personal commitment.

B. A member of this Board has the same fiduciary obligations as do members of the Board of any corporation, together with additional responsibilities to serve the public interest and to comply with the Legal Services Corporation Act and all other applicable statutes and regulations.

C. I was team leader of the transition team that studied the Legal Services Corporation for the Office of the President-Elect, and have served as a member of the Board of the Legal Services Corporation since December 30, 1981.

D. I am a member of the Board of Trustees of Davis Memorial Goodwill Industries, which serves the Washington, D.C. metropolitan area. Goodwill is a service organization for mentally, emotionally and physically handicapped persons, most of whom are eligible clients. (I also serve on its Building Committee concerned with the development of a new facility for Goodwill and on the Board's Nominations Committee.) I provide free legal services to Goodwill on an as-needed basis. I am a founding member of the Board of Trustees and Secretary-Treasurer of Victims Assistance Legal Organization. A substantial amount of our work is directed toward being the voice of the victim, and assisting victims in obtaining compensation for their injuries. Of course, many victims of violent crime are poor.

2. A. Yes, I am generally familiar with the programs in Northern Virginia. I have read the Corporation's files concerning the programs operating in Northern Virginia.

B. As with many other social needs, such as health care, education, housing, etc., the need for legal services has and currently does outpace the supply.

3. It is my belief that the Board should never interfere with ongoing litigation funded by a recipient corporation as long as no laws or regulations are being violated.

4. A. Yes.

B. It is my belief that Legal Services attorneys should concentrate on the problems of individual clients who seek their representation. When priorities must be established, it is critical that first priority be given to immediate legal needs of the poor, rather than the personal agenda of a particular staff attorney concerning governmental changes he would favor or oppose.

5. A. With lawyers performing virtually all types of services, it is difficult to know what a "full spectrum" of professional representation is. I believe that the Legal Services program should provide clients with those services which are traditionally legal, most particularly litigation, rather than attempting to duplicate all the "non-legal" services being offered by many lawyers today.

B. See answer to number 5A.

6. Yes. I agree, providing that the Legal Services attorney is truly representing a client rather than pursuing his or her own agenda.

7. Yes, except that I would object to an attorney's serving as a publicity agent or community organizer on behalf of a particular client even though there are some attorneys who would perform these services if paid in the private sector.

8. A. I believe that Board members must avoid any conflict of interest, and should endeavor to avoid the appearance of a conflict of interest.

B. It is difficult to respond to this question as I cannot conceive of examples of conflicts of interest which are not proscribed.

C. (No question.)

D. I do not believe so.

9. A. The role of clients is set out quite clearly in the statute. It is appropriate and desirable for the recipients of legal services to participate in the decisions concerning their provision. At all times I would ensure that non-lawyers are not controlling the professional judgment of lawyers. This would be in violation of the Bar's Disciplinary Rule 5-107.

B. I believe client representation is important on the national Board. I look forward to working with anyone who is selected to be a member of the Board as a fellow Board member and also with those clients who advise the Board in furtherance of the best interests of the Corporation.

10. A. I support the criteria set out on attachment A in locating a permanent President of the Corporation.

B. The President of the Corporation must be committed to the provision of legal services for the poor in this country.

11. A. I am an attorney, I am a member of the Virginia State Bar, the D.C. Bar, the Bar Association of the District of Columbia, the Virginia Bar Association, the Federal Bar Association, and the American Bar Association, and as set forth above, I also represent an organization of eligible clients. It is difficult to tell who represents the general public, but I would think that all members of the Board, including myself, represent some portion of the general public.

B. I am not in a position to speak to this question as I do not know the background of all the nominees to the Board.

12. I have devoted substantial time during the last four and one-half months to the Legal Services Corporation, and I would be prepared to devote such time as was necessary in order to be an effective and well informed Board member.

13. I am an attorney in private practice in Washington, D.C. with the firm of Smiley, Olson and Gilman, which demands substantial time and attention. Other than that I have no other commitments, other than my family, which would come before service as a member of the Board of the Corporation.

14. A. Subsequent to confirmation hearings, it is my earnest desire to visit the programs in the Washington, D.C. and Northern Virginia metropolitan area to learn how they operate and their special concerns. I would also like to visit some of the Washington offices of the national support centers. The Presidential Search Committee will visit the Denver Regional Office in eary May, 1982.

B. I plan to devote four or five days to this over the coming two months.

15. A. Yes.

B. Yes. Much legal work, particularly litigation, is subject to abuse if political control is exerted over attorneys representing either side. This is improper under all circumstances, and the independence of the Legal Services Corporation is designed to meet this need.

C. I don't know what steps could be taken other than insuring that I personally am not subject to any political influence or control and that I do not allow any violation of this principle by others. This I intend to do.

16. No.

17. A. No.

B. No.

18. A. My only commitment is to fulfill my fiduciary duties to the Corporation as a member of the Board. I am accepting this nomination to the Board, subject to approval by the Senate, because I would like to assist in the effective delivery of legal services to the poor.

B. No.

19. I was contacted by E. Pendleton James, Assistant to the President for Personnel on December 30, 1981 concerning my appointment. I have never discussed President Reagan's position on Legal Services with any White House personnel. I received no recommendations of any particular person to be President of the Corporation from any White House personnel.

20. A. I would feel that employment decisions are the province of the Board, not the Executive or Legislative branches, but names may properly be submitted by either.

B. No.

LEGAL SERVICES CORPORATION
733 Fifteenth Street, N.W., Washington, D.C. 20005

POSITION ANNOUNCEMENT

External Posting

POSITION: President

POSTING NO: 581

LOCATION: Executive Office
Legal Services Corporation
Washington, D.C. 20005

DATE POSTED: 4/1/82

CLOSING DATE: 5/1/82

DESCRIPTION:

The Legal Services Corporation is seeking an experienced and skilled person to serve as its President. In coordination with the Corporation's Board of Directors, the President is responsible for overseeing the full range of activities conducted by the Corporation.

The Legal Services Corporation is a private, non-profit corporation established by Congress in 1974 to provide financial support for legal assistance to the poor in civil matters. With a current annual appropriation of $241 million, the Corporation funds over 320 local programs that deliver legal services directly to clients and furnishes, through its staff as well as by grant and contract, a wide variety of support services to enhance the capability of those local programs to provide quality legal assistance.

DUTIES AND RESPONSIBILITIES:

The President has responsibility for di[illegible]ing a[illegible]spects of the operations of the Legal Services Corporation. The Pres[illegible]'s specific duties include, among others, responsibility for Corporation activ[illegible]es in connection with:

- The Corporation staff
- The Corporation's Board of Directors
- The Congress
- Federal agencies
- The private bar
- Local legal services programs
- Other organized groups interested in legal services.

QUALIFICATIONS:

The following qualifications are required.

- Law degree and membership in the bar of the highest court of a state

The following qualifications are considered desirable:

- Extensive experience and demonstrated ability in management and administration
- Experience with Congress, Federal agencies, or other grant-making entities
- Familiarity with legal services or public interest law practice.

SALARY AND BENEFITS:

Maximum salary Executive Level V (currently $57,500, set by statute); liberal leave; all official holidays; free dental insurance; Federal retirement; health and life insurance available.

APPLICATION PROCEDURE:

Applicants are encouraged to submit complete resumes no later than May 1, 1982 to:

LeaAnne Bernstein, Suite 700
Legal Services Corporation
733 15th Street, N.W.
Washington, D.C. 20005

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

ANSWERS OF WILLIAM L. EARL TO QUESTIONS PROPOUNDED BY SENATOR CRANSTON

1. A. Why do you wish to serve on the Legal Services Corporation Board and what do you think will be the nature of the contribution you will make to the Legal Services Corporation?

   B. What is your understanding as to the duties and responsibilities of a member of the Legal Services Corporation Board?

   C. What prior involvement have you had with legal services programs?

   D. What organizations concerned with the poor have you been involved in and what was the nature of your involvement?

I want to serve on the Board of Directors of the Legal Services Corporation because I believe the program is entering an especially critical period. In an era of decreasing resources and increasing need, inovation and imagination will be necessary to provide legal services for the poor. As a member of the Legal Services Corporation Board, my responsibility will be to take steps to assure equal access to the system of justice for the poor and to maintain and enhance the quality of legal services for the poor. Most of my pro bono time has been spent in my area of specialty or in several matters involving the representation of people unable to pay attorneys' fees. At the present time, I have volunteered to provide representation for Haitian aliens who are not now represented. My firm has also become part of the Florida Bar's "Interest on Trust Account Program." This program, the first of its kind in the Nation, is a voluntary program in which lawyers agree to establish "NOW" accounts on clients' trust funds. The interest on such accounts goes to the Florida Bar Foundation, and 80% of such interest income will be distributed for legal services for the poor. Since my nomination, most of my free time has been devoted to visiting and becoming familiar with Legal Service Corporation employees, recipients and programs. I have, to date, visited three regional offices, national and state support centers, model programs regarding volunteer lawyers and staff supported pro bono programs, and Legal Services Corporation local programs.

2. A. (i) Are you familiar with the legal services programs operating in your own community?

   (ii) If so, describe the basis for this familiarity and your general views regarding such programs.

   B. Would you please comment briefly on the extent to which you believe that the need for legals services is being met -- both in your own community and nationally?

Yes, I am familiar with legal service programs operating in my area. My familiarity comes from visiting such programs personally and discussing the problems of such programs with the program directors and staff.

The need for legal services in Florida, by more particularly in the Miami area (Dade & Monroe Counties), far exceeds the abilities of Legal Services Corporation funded recipients to provide such services. This is especially true in light of the cut backs in the Miami program and the extraordinary demands made upon the Miami program refugee and other problems for which Miami has beecome nationally known. By way of example, Greater Miami Legal Services has approximately 20 attorneys to service what they estimate to be 350,000 people in an area extending from northern Dade County all the way to Key West (Monroe County). In many of these areas, no services are being provided. To date, I have visited five local programs in Florida. I plan to visit with all programs in Florida and representative programs throughout the country.

3. Under what circumstances, if any, do you feel it would be appropriate for a member of the Legal Services Corporation Board to interfere with a case being handled by a program's staff attorneys?

In my view, it is inappropriate for a member of the Legal Services Corporation Board to interfere with a case being handled by a particular staff attorney. I believe that the purpose of the Board is to set policy for all recipient programs and not to deal with specific cases being handled by specific attorneys. I believe it is a Board member's duty to become familiar with as many programs as possible around the Country. If, in the course of becoming familiar with such programs, it becomes apparent to a Board member that practices of a program are in violation of Congressional restrictions, restrictions of the Legal Service Corporation Act, or established policies of the Corporation; I believe it is a Board member's obligation to identify that situation to the Legal Service Corporation's staff for investigation. It is not an individual Board member's role to personally investigate specific cases. Such efforts must be handled by full-time, professional staff under policies and procedures established by the Board.

4. A. (i) Do you believe that is appropriate for legal services attorneys to litigate against state governments or federal agencies?

(ii) If not, why not?

B. If a client's rights are being, or may in the future be, violated by the actions or proposed actions of a governmental agency, do you believe it appropriate for legal services programs to seek to have the agency's policies or regulations changed through non-adjudicatory advocacy before that agency?

I believe it is appropriate for legal service attorneys to, where necessary, litigate against local, state or federal government in any case where it would be appropriate for privately retained counsel to undertake such litigation. This, of course, assumes the existence of appropriate peer and supervisory review within particular programs. Moreover, if the client's rights are being or may be violated by the actions or proposed actions of a governmental agency, I believe it is appropriate -- again with necessary peer and supervisory review -- for a staff attorney to seek to have policies or regulations changed. There should be no unnecessary restrictions governing or restricting the remedies available to the Legal Service Corporation attorney if, and only if, such attorney is subject, within his particular program, to appropriate peer and supervisory review under pre-existing policies established by that recipient in accordance with the requirements of the Legal Services Corporation Act and properly promulgated regulations of the Corporation.

5. A. Do you believe that legal services programs should provide the full spectrum of professional representation to the clients they represent?

   B. What aspect of professional representation do you believe should be denied low-income clients and why?

There should be no unnecessary restrictions governing or restricting the remedies available to the Legal Service Corporation attorney if such attorney is subject to appropriate peer and supervisory review under pre-existing policies established by a recipient in accordance with the requirements of the Legal Services Corporation Act and properly promulgated regulations of the Corporation.

6. Do you believe that a legal services lawyer funded by the Corporation should vigorously pursue cases against the federal government that he or she believes are meritorious, even if they embarrass the government or arouse people in Congress?

My answer to this question is the same as my answer to questions number 4 and 5 above. I believe that there should be no unnecessary restrictions governing or restricting the remedies available to the Legal Service Corporation attorney if such attorney is subject, within his particular program, to appropriate peer and supervisory review under pre-existing policies established by that recipient in accordance with the requirements of the Legal Services Corporation Act and properly promulgated regulations of the Corporation. Legal Service Corporation attorneys should have access to the full array of remedies available to privately represented litigants. On the other hand, I believe that legal service attorneys should be subject to appropriate ethical restrictions and their choice of remedies should be subject to appropriate peer and supervisory review within a program to avoid inappropriate actions which would also be irresponsible or inappropriate if undertaken by a private practitioner.

7. Do you agree that it is a legal services attorney's right and responsibility, in consultation with his or her client, to select the forum, remedy, and strategy which is most appropriate to his or her client's needs?

Yes, subject to the same assumptions and conditions set forth in answers to questions numbered 4, 5 and 6 above.

8. A. Do you agree that Board members must avoid any conflict of interest or appearance of conflict of interest even if not strictly within the proscription of the Legal Services Corporation Act?

B. Would you take whatever steps are necessary to remove yourself from any conflict of interest -- or appearance of a conflict of interest -- even in those instances which do not technically fall under the Act's proscriptions?

C. Do you now represent, or have you represented, or are you associated in any way with, any organization which represents or has represented any client in litigation or negotiations against a party represented by a legal services attorney? If so, describe the nature of such litigation and its current status.

(i) Will you terminate any relationship that still exists to such a client regarding any on-going controversy?

(ii) Will you agree not to represent any clients in litigation or negotiations against a party represented by a legal services attorney during your service on the Board of Directors if you are confirmed by the Senate?

(iii) Will your law firm or the entity with which you are affiliated undertake such a case while you serve on the Board?

(iv) If so, what steps will you take to prevent any appearance of conflict of interest in such undertaking?

Yes, I believe a Board member must avoid any conflict of interest or appearance of conflict of interest and I would take whatever steps are necessary to remove myself from any conflict of interest. Although I do not now believe I am in any conflict situations, I have, out of an abundance of caution, sent a letter to Chairman Hatch describing the only circumstances of which I am aware in which one of my clients, a public sector client (County), has been sued by a Legal Services Corporation recipient. I have advised both the County and the Legal Services recipient at issue of the situation. Please see my letter to Chairman Hatch attached hereto as Exhibit A. I will not represent any client in litigation or negotiations against a party represented by legal services attorney during my service on the Board of Directors. Nor will my law firm undertake such representation.

9. A. What role do you think clients of legal services programs should have in the operation of local programs?

B. What role do you believe clients should have in the activities of the national Board?

A recipient program must have a governing body that reasonably reflects the interests and characteristics of eligible clients in the area served by the program. These representative clients and clients actually serviced play an important role in the operation and direction of local programs. The activities of the

Legal Services Corporation itself should also reflect input from clients, including eligible client representation. Legal Service Corporation policies must, of course, reflect and meet client needs.

10. A. What should be the criteria for screening candidates for replacement of Mr. Bradley as permanent president of the Corporation?

B. Would you actively oppose a candidate with a record of antagonism to the legal services program?

The selection of the new Legal Services Corporation President will be the most critical decision to be faced by the new Board. The decision will send far-ranging signals to staff attorneys, recipients, clients, the bar associations and the entire legal community. The individual selected will have to be able to relate not only to field personnel and program personnel, but to the new environment in the Legal Services Corporation. I personally favor the selection of an individual with "hands-on" experience in the delivery of legal services to the poor. A key element in the effectiveness of the new president will be his ability to relate to the field programs. A successful candidate for presidency must also be an effective administrator and public advocate for the Corporation. I would oppose a candidate for the presidency of the Legal Services Corporation with a record of antagonism towards the program.

11. The Legal Services Corporation Act provides that the Board of Directors should include eligible clients and should be generally representative of the organized bar, attorneys providing legal assistance to eligible clients, and the general public; the legislative history further elucidates this later category to include persons representative of organizations involved in the development of legal assistance for the poor, the academic legal community, women, and minority groups.

    A. Which of these categories do you feel you are representative of? Please explain the basis for your answer.

    B. (i) Do you feel the nominees submitted to the Senate, taken as a whole, reflect the composition of the Board intended by the Congress?

       (ii) If not, what groups do you feel are not represented?

With regard to subpart B of this question, I have not reviewed the background checks or the Senate qualification materials submitted to the Committee by other Board members. I am, therefore, unable to answer this question as to the qualifications of other board members. In addition to my other qualifications, I am a representative of an organized bar. In fact, I am a member of not only the Dade County and Florida Bars, but also the American Bar Association and the District of Columbia Bar. My membership in the Florida Bar, I believe, is particularly important as to my duties as a director of the Legal Services Corporation. The Florida Bar has been a leader in establishing inovative programs to provide legal services to the poor. For example, Florida was the first state to establish and have in place a functioning interest on trust account system which funnels interest on lawyers' trust accounts to the

Florida Bar Foundation which will then disburse 80% of such funds to provide legal services to the poor. Although the program started early this year, funds are already starting to flow into the Foundation. Knowledge and participation in this program, in which my firm is a participant, gives me insight into methods of increasing alternative sources of funding for legal services for the poor. Although I do not qualify pro bono clients as "eligible," I believe I have, over the last several years represented individuals and provided legal assistance to individuals who would qualify as eligible clients. In addition, I have spent considerable amounts of time visiting local, state and national programs, regional offices and support centers learning about the delivery of legal services to the poor. I believe my views basically reflect the views of many of the attorneys actually providing legal services to eligible clients and the poor. I strongly support both equal access to the system of justice and the delivery of quality legal services to the poor. Although not being familiar with specific qualifications of other Board members, I do know from just brief conversation with other nominated Board members that the academic legal community is represented, that women are represented, and that minorities are represented. Another important qualification I feel I have as a Board member is my status as a trial attorney and litigator. This is particularly important in understanding and relating to problems in the provision of legal services to the poor by staff attorneys. I am also the coauthor of the first definitive class action bibliography ever published. A Comprehensive Class Action Bibliography, 4 Class Action Reporter (1975).

12. How much time would you be prepared to commit during your term to the business of the Legal Services Corporation?

I am prepared to commit all time needed to function as an effective Board member of the Legal Services Corporation. Since my nomination I have undertaken to devote most of my free time to visiting local programs, state and national support centers, several regional offices, and model projects. When visiting the New York Regional Office, for example, I was told that I was the only Board member who had visited that office in several years. I intend to continue to spend whatever time is needed to fully understand and assist in the delivery of legal services to the poor and to assist bar organizations around the country in providing effective pro bono services to the poor.

13. What other commitments do you have that will affect the time you may devote to the business of the Corporation?

My practice as an attorney and normal bar activities will continue, Such duties will not prevent me from spening the time necessary to carry out my Legal Service Corporation functions.

14. A. Will you have time and do you intend to visit various services programs to learn how they operate and what problems and needs they have?

B. How much time do you plan to devote to such visits?

Since my nomination I have devoted substantial time to visiting local programs, state and national support centers, several regional offices, and model projects around the country. When visiting the New York Regional Office, for example, I was told that I was the only Board member to have visited that office in several years. I intend to continue to spend whatever time is needed to fully understand and assist local recipients in the delivery of legal services to the poor and to assist bar organizations around the country in providing effective pro bono services to the poor.

15. A. Do you agree with the stated objective of the Act to keep the Legal Services program independent of political influence and control?

B. Do you agree that the independence of the legal services program from political influence and control is critical to its carrying out its statutory mission? Why?

C. What steps will you personally take to maintain the independence of the Corporation from political influences?

I agree with the stated objective of the Legal Services Corporation Act to keep the Legal Services Corporation independent of political influence and control. I believe insulation of the program is critical.

I personally intend to keep insulation from partisan politics a key objective in carrying out my duties as a Board member.

16. Do you have any reservations about supporting the letter and spirit of any provisions of the Legal Services Corporation Act? If so, explain.

No.

17. A. Have you made any speeches, statements, or communications with any public agenices, media, or legal services programs which reflect your basic position on legal services for the poor and/or the Legal Services Corporation? If so, please provide copies of such materials.

B. (i) Where you asked to participate in any efforts during the past year either to continue or abolish the Legal Services Corporation?

(ii) By whom were any such requests made and what, if any, action did you take in response to any requests?

Most of my communications have been orally in visits or telephone communications with legal service personnel and programs around the country. In my home state of Florida, however, I have sent letters expressing my support to bar leaders, the judiciary, and to those actually involved in providing legal services in Florida. (Please see Exhibits B & C attached hereto.) I have not been asked to participate or take a position during the past year or at any other time, in efforts to abolish the Legal Services Corporation.

18. President Reagan has recommeded abolition of the Legal Services Corporation. With respect to this recommendation --

    A. Are you committed to opposing the abolition of the Legal Services Corporation? If not, why are you accepting this nomination to the Board of Directors?

    B. In relationship to your nomination, have you made any commitments with regard to your position on the question of abolition of the Corporation?

I have not been asked to and have not taken any position in opposition to the continued existence of the Corporation and, in fact, in all communications to date have reiterated my support of Legal Services Corporation and its program. I have never been asked to take a position and I have not discussed with White House personnel, President Reagan's recommendation that the Corporation be abolished. I have had no discussions with White House personnel regarding a temporary or permanent president.

19. Please discuss the nature and timing of your contacts with White House personnel or other representatives of the Administration regarding your nomination and specifically what discussions occurred regarding your position on (A) President Reagan's recommendation that the Corporation be abolished, and (B) the appointment of a temporary or permanent President or any other officer of the Corporation.

Please see answer to question 18 above.

20. A. What is your position on the appropriateness of the White House participation in, or actually deciding upon, the selection of the President or any other officer of the Corporation?

B. Do you plan to discuss with White House personnel or other Administration representatives such personnel decisions to be made by the Board of Directors?

In my view, the Legal Services Corporation Act has been designed to insulate directors from the direct influence of either the executive branch or the Congress. I believe the President selected my name for nomination because he wanted my independent judgment as to decisions at the Legal Services Corporation. I fully intend to exercise that independent judgment. I have no plans to discuss with White House personnel or other administration representatives personnel decisions to be made by the Board of Directors. I do not believe, however, that I am precluded by the spirit or letter of the Act from discussing with anyone, including members of Congress, the Senate, congressional staff or White House personnel matters relating to the Legal Services Corporation. I would hope that I would be able to obtain information from all such sources. I would, however, reject and consider inappropriate any specific requests by any such sources to appoint particular individuals to positions with the Legal Services Corporation. Moreover, as I understand the Act and existing regulations, the Board selects only the President of Legal Service Corporation, the President thereafter selects other officers and employees. As indicated in a prior question, I believe the selection of the President is probably the most important task that the Board of Directors will face regarding the direction and continued existence of the Legal Services Corporation. I fully intend to see that this selection process is open and objective and considers input from all segments of the public interest, including client groups, legal services personnel, organizations, and the public.

PEEPLES, EARL, MOORE & BLANK
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

L. GRANT PEEPLES
WILLIAM L. EARL
EDGAR M. MOORE
ROBERT M. BLANK
L. LEE WILLIAMS, JR.
PAUL H. AMUNDSEN
ROBERT C. APGAR
WILLIAM F. TARR
HOWARD A. SPIER

WALTER T. MOORE, JR.
COUNSEL

ONE BISCAYNE TOWER, SUITE 3636
TWO SOUTH BISCAYNE BOULEVARD
MIAMI, FLORIDA 33131
(305) 358-3000

300 EAST PARK AVENUE
POST OFFICE BOX 1169
TALLAHASSEE, FLORIDA 32302
(904) 222-5510

REPLY TO:

Miami

April 9, 1982

Honorable Orrin G. Hatch
Chairman, Committee on Labor and
Human Resources
Suite 125, Russell Building
Washington, D.C. 20510

Re: Legal Services Corporation -- Statement for Completion by Presidential Nominees

Dear Senator Hatch:

Subsequent to filing the above-referenced statement with the Senate, I have learned of the existence of a lawsuit instituted by a Legal Services Corporation recipient, Florida Rural Legal Services, Inc., against Manatee County, Florida. This action, styled Martina Palacios, et al. v. Manatee County, et al., is filed in the United States District Court for the Middle District of Florida, under Case No. 81-467-CIV-T-H, and alleges Fair Housing Act and other violations as to seasonal farm workers in Manatee County.

I do not represent the County in this or any other action by or against Legal Services or any eligible clients. As indicated in my statement previously filed with the Senate, I represent Manatee County in the limited capacity of special environmental counsel. This primarily relates to representing Manatee County in its efforts to regulate phosphate mining in the County.

It is my understanding that Manatee County is represented in this case by Mr. Fred Bosselman, of Ross, Hardies, O'Keefe, Babcock & Parsons of Chicago, Illinois.

Should you or the other members of the Committee desire more information on this matter, I will be glad to provide any additional details.

Sincerely,

WL Earl

William L. Earl

EXHIBIT A

PEEPLES, EARL, MOORE & BLANK
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

. GRANT PEEPLES
WILLIAM L. EARL
EDGAR M. MOORE
ROBERT M. BLANK
LEE WILLIAMS JR
PAUL M. AMUNDSEN
ROBERT C. APGAR
WILLIAM F. TARR
HOWARD A. SPIER

WALTER T. MOORE JR
COUNSEL

ONE BISCAYNE TOWER SUITE 3636
TWO SOUTH BISCAYNE BOULEVARD
MIAMI, FLORIDA 33131
(305) 358-3000

300 EAST PARK AVENUE
POST OFFICE BOX 1169
TALLAHASSEE, FLORIDA 32302
(904) 222-5410

REPLY TO
Miami

April 26, 1982

The Honorable Alan C. Sundberg
Chief Justice
The Florida Supreme Court
Supreme Court Building
Tallahassee, Florida 32301

Re: Legal Services for the Poor

Dear Chief Justice Sundberg:

I have recently been nominated by President Reagan to be a director of the Legal Services Corporation. Because of your long-standing interest in the provision of legal services to the poor, I want to take this opportunity to let you know that I strongly support the provision of quality legal services for the poor. I intend to do everything possible to support adequate legal services for the poor in Florida and elsewhere. Please call upon me if I can be of any assistance whatsoever.

Very truly yours,

William L. Earl

WLE/re

EXHIBIT B

PEEPLES, EARL, MOORE & BLANK
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

L. GRANT PEEPLES
WILLIAM L. EARL
EDGAR M. MOORE
ROBERT M. BLANK
L. LEE WILLIAMS, JR.
PAUL H. AMUNDSEN
ROBERT C. APGAR
WILLIAM F. TARR
HOWARD A. SPIER

WALTER T. MOORE, JR.
COUNSEL

ONE BISCAYNE TOWER, SUITE 3838
TWO SOUTH BISCAYNE BOULEVARD
MIAMI, FLORIDA 33131
(305) 358-3000

300 EAST PARK AVENUE
POST OFFICE BOX 1169
TALLAHASSEE, FLORIDA 32302
(904) 222-5510

REPLY TO:
Miami

April 16, 1982

Richard C. Woltmann, Esquire
Director
Bay Area Legal Services, Inc.
305 N. Morgan Street
Suite 400
Tampa, Florida 33602

Re: Legal Services Corporation

Dear Dick:

As you know, I was recently nominated by President Reagan to be a director of the Legal Services Corporation. I enjoyed the opportunity of discussing legal services with you. I want to take this opportunity to let you know that I strongly support quality legal services for the poor and equal access to the system of justice. I intend to do everything possible to support adequate legal services for the poor in Florida and elsewhere. I look forward to working with you in this endeavor.

Sincerely,

William L. Earl

WLE/re

ANSWERS OF WILLIAM L. EARL TO QUESTIONS PROPOUNDED BY SENATOR EAGLETON

1. In your view, what is the meaning of "full access under law to comprehensive and effective legal services"?

The quoted phrase, in my view, simply means that a poor person should have access to the entire range of quality legal services available to persons who are able to afford legal services. A legal services client must have the same selection of forums, remedies, and strategy available to all others in our system of justice.

2. Do you believe that legal services programs should provide the full spectrum of professional representation -- whether it is approaching a State legislature, contesting the decision of a Governor or other high official, or challenging a State or local statute or ordinance, so long as it is related to the direct professional responsibility to that client and that case?

I believe there should be no unnecessary restrictions governing or restricting the remedies available to the Legal Services Corporation attorney if such attorney is subject, within his particular program, to appropriate peer and supervisory review under pre-existing policies established by that recipient in accordance with the requirements of the Legal Services Corporation Act and properly promulgated regulations of the Corporation. Legal Services Corporation attorneys should have access to the full array of remedies available to privately represented litigants. Legal service attorneys, however, should also be subject to the same ethical and professional restriction to which private attorneys are subject.

3. Do you agree that the provisions of the Legal Services Corporation Act require that there be no interference with a legal services attorney's professional responsibilities?

Yes. This answer, of course, assumes that legal service attorneys are subject to appropriate ethical restrictions and that their actions are subject to appropriate peer and supervisory review within their particular local program so as to avoid inappropriate actions that would also be irresponsible or inappropriate if undertaken by a private practitioner.

4. Do you agree that any guidelines established by the Corporation must be grounded on the principle that there can be no interference with a legal services attorney's professional responsibilities?

Yes. Subject to the same assumptions set forth in my answer to question number 3, above.

5. Do you believe that under the Act, local programs must be insulated from political interference?

Yes.

6. Do you think it is the job of the Legal Services Corporation Board to try to set each local program's priorities, or should the Board allow the boards, the staff, and the clients of local programs to do that, in accordance with their own local needs and the resources available to them?

Local programs must establish their own priorities in accordance with properly promulgated Legal Services Corporation policies and congressional restrictions upon Legal Services Corporation activities.

7. Do you believe that there are cases in which there may properly be interference by the Board in the professional representation by a staff attorney of an eligible client?

I believe it is inappropriate for a member of the Legal Services Corporation Board or the Board itself to interfere with a case being handled by a particular staff attorney. I believe that the purpose of the Board is to set policy for all recipient programs and not deal with specific cases being handled by specific attorneys. I also believe that it is a Board member's duty to become familiar with as many local programs as possible around the country. If, in the course of becoming familiar with such programs, it becomes apparent to a Board member that practices of the program are in violation of congressional restrictions, restrictions of the Legal Services Corporation Act, or established policies of the Corporation; I believe it is the Board member's obligation to identify that situation for the

Legal Services Corporation staff to investigate. It is not an individual Board member's role or the role of the Board itself to personally investigate specific cases. Such efforts must be handled by a full-time professional staff under policies and procedures established by the Board pursuant to congressional mandates.

8. Have you ever served as a member of a lawyer referral program? When and how many times have you participated in representing poor clients at low cost or for no charge?

I have in the past served as a member of a lawyer referral program. Most of my pro bono time has been spent in my area of specialty or in several matters involving the representation of people unable to pay attorneys fees. Prior to my nomination to the Board of Directors of the Legal Services Corporation, I had volunteered to provide representation for Haitian aliens who are now not represented. My firm has also become part of the Florida Bar's "Interest on Trust Accounts Program." This program, the first of its kind in the nation, is a voluntary program in which lawyers agree to establish "NOW" accounts on clients' trust funds. The interest on such accounts goes to the Florida Bar Foundation, and eighty percent of such interest income will be distributed for legal services for the poor in Florida. My pro bono representation in the last several years has involved substantial expenditures of time on three major cases and several smaller matters.

9. Do you now represent, or have you represented, or are you associated in any way with any organization which represents or has represented any client in litigation or negotiations against a party represented by a local legal services attorney? If so, describe the nature of such litigation and its current status.

No. I do not believe that I am in any conflict situations, but I have, out of an abundance of caution, sent a letter to Chairman Hatch describing the only circumstances of which I am aware in which one of my clients, a public sector client (county), has been sued by a Legal Services Corporation recipient. I have advised both the county and the legal services recipient at issue of the situation. Please see my letter to Chairman Hatch dated April 9, 1982, if more details are required. I will not represent any client in litigation or negotiations against a party represented by a legal services attorney during my service on the Board of Directors. I believe a Board member must avoid any conflict of interest or even appearance of conflict of interest.

10. The 1974 Committee report on the Legal Services Corporation Act states that Board members should be "fully committed to the role of legal assistance attorneys and support the underlying principle of the legislation that it is in the national interest that the poor have full access under law to comprehensive and effective legal services." Do you support these principles?

Yes.

11. A document purported to be a summary of the Transition Report on the Legal Services Corporation, states that the Report presented various options in order to "free up dollars for judicare as well as prohibit some of the more repugnant activities of local programs." Reportedly, among various options presented were:

    -- providing Governors with a veto over all grants within the State;

    -- decentralizing LSC by creating regional or state Corporations;

    -- giving grant-making authority to the regional offices that would be more responsive to local concerns; and

    -- requiring clients to pay part of the cost of representation.

    As a member of the Board, would you support any or all of those options?

No, based on my present understanding of the Legal Services Corporation Act and the history of the delivery of legal services since OEO days.

Senator **Quayle**. The next panel will combine Ms. Hernandez, Ms. Schwartz, Ms. Kellock, Mr. Veney, Mr. Eisenberg, Mr. Torres, Mr. Loines, and Mr. Dorsey.

I would like to take the opportunity to welcome many students from Borden High School, in Borden, Ind. I thank them for coming. You are being entertained to the nominations of the Legal Services Corporation, to the Board of Directors, and now you will hear witnesses commenting on the nominations, both pro and con.

We have had a request to go a little out of order. Mr. Torres has asked to go first because of a previous commitment, if the witnesses would yield and let him go first.

Ms. **Hernandez**. I would be delighted, but I have a 1:15 appointment with Senator DeConcini.

Senator **Quayle**. Just proceed in order.

Let me remind the panel that remarks will be kept to 3 minutes. The light is green. When it becomes amber, it means you have 30 seconds, and when it goes red I will interrupt at the conclusion of the sentence.

I further remind the panel that the entire testimony that you are about to give will be submitted into the record into its entirety.

Ms. Hernandez?

STATEMENT OF ANTONIA HERNANDEZ, ASSOCIATE COUNSEL, MEXICAN AMERICAN LEGAL DEFENSE & EDUCATIONAL FUND, WASHINGTON, D.C.

Ms. **Hernandez**. Thank you. My name is Antonia Hernandez, and I am the associate counsel for the Mexican American Legal Defense and Educational Fund. MALDEF is a national civil rights organization dedicated to promoting and protecting the civil and constitutional rights of 50 million Hispanic Americans. I am pleased to be here to give our views on the nomination of Mr. Paras.

Our experience with Mr. Paras in California and several letters of his that have been widely revealed to the public lead us to conclude that Mr. Paras was chosen by President Reagan to sit on the Board of the Corporation in order to aid in the President's plan for its destruction. There is nothing in Mr. Paras' record, job experience, court decisions, civic or membership activities, or in his much publicized personal views that so much as hint that he has any special concern for the problems of the poor.

To the contrary, everything in his record suggests a deep, ideological hostility to the principles of the Legal Services Corporation. He has also displayed a furious temper and a lack of decorum when confronted with policies with which he does not agree. It is no doubt well known to the committee that Mr. Paras resigned his judgeship in the California appellate court with considerable fanfare and fury because, in essence, the California supreme court overruled him on a decision. Mr. Paras has made it quite clear that he has no interest in upholding laws with which he personally disagrees. Perhaps President Reagan had this in mind when he selected Mr. Paras to direct an organization which, 8 months earlier, he sought unsuccessfully to abolish.

This conclusion was confirmed in a recent article in the St. Louis Post Dispatch. The administration official told the paper that "President Reagan had selected a Board that he hopes will remake the Corporation from the inside while the administration continues its efforts to get Congress to abolish it."

I will not read the rest of my statement, but I will make a couple of comments. The Legal Services Corporation is a very important organization to the Hispanic community. The services that they render are invaluable. MALDEF has no direct impact on and we receive no funds from the Legal Services Corporation.

Although we have some serious reservations as to the other nominees, we firmly believe that the comments and statements not only show a hostility to minorities and the poor but specifically Mexican Americans.

[The prepared statement of Ms. Hernandez follows:]

TESTIMONY OF

ANTONIA HERNANDEZ, ASSOCIATE COUNSEL
MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

My name is Antonia Hernandez. I am the Associate Counsel of the Mexican American Legal Defense and Educational Fund, MALDEF. MALDEF is a national civil rights organization dedicated to promoting and protecting the civil and constitutional rights of close to 15 million Americans of Hispanic descent. I am pleased to have been given the opportunity to present our views on the nomination of George E. Paras to the Board of Directors of the Legal Services Corporation.

Our experience with Mr. Paras in California and several letters of his that have been revealed to the public lead us to conclude that Mr. Paras was chosen by President Reagan to sit on the board of the Corporation in order to aid in the President's plan for its destruction. There is nothing in Mr. Paras' job experience, court decisions, civic or membership activities, or in his much-publicized personal views that so much as hint that he has any special concern for the problems of the poor.

To the contrary, everything in his record suggests a deep, ideological hostility to the principles of the Legal Services Corp. He has also displayed a furious temper and lack of decorum when confronted with policies with which he does not agree. It is no doubt well known to the Committee that Mr. Paras resigned his judgeship in the California Appellate Court with considerable fanfare and fury because, in essence, the California Supreme Court overruled him on a decision. Mr. Paras has made it quite clear that he has no interest in upholding laws with which he personally disagrees. Perhaps President Reagan had this in mind when he selected Mr. Paras to direct an organization which, eight months earlier, he sought unsuccessfully to abolish.

This conclusion was confirmed in a recent article in the St. Louis Post Dispatch. An Administration official told the paper that "President Reagan had selected a board that he hopes will remake the Corporation from the inside while the Administration continues its efforts to get Congress to abolish it." (St. Louis Post Dispatch, February 3, 1982.)

Mexican Americans have been among the millions of poor people who have been served by Legal Services Corporation programs since the Corporation's founding in 1974. Last year, one out of every six persons served by Corporation programs was Hispanic; that is, 250,000 out of 1.5 million clients. It is not surprising that Hispanics should make up so large a percentage of this group. Hispanics are among the most economically disadvantaged in the United States. Using federal poverty guidelines, about one in five Hispanic families is poor, compared to one in eleven for the white population. Approximately 20 percent of our population lives below the poverty level. Conditions are far worse in certain states and regions. In Texas, for example, one in three Hispanic families is poor and averages only 58 percent of a white family's income.

In many of those regions, Hispanics make up the majority of clients in various Corporation programs. For example, Texas Rural Legal Aid, a program serving the poverty-ridden Rio Grande Valley in South Texas, had a clientele that was 92 percent Hispanic in 1980. Nationwide, of 8600 cases closed by the 32 migrant legal service programs in 1980, 78 percent involved Hispanic clients.

I would like to mention at this point that MALDEF is not funded by the Legal Services Corporation, and our interest in opposing Mr. Paras and supporting the Corporation is not financial. With the exception of one research grant we received from the Corporation in 1980--which they invited us to apply for--we have never sought or received funds from the Corporation. Our interest in preserving this agency is the result of our understanding of the plight of poor people who need legal services, many of whom simply suffered and did without them prior to 1974 when the Corporation was established.

Our particular concern is of course the legal problems of Mexican Americans and other Hispanics, who are the victims of widespread discrimination in employment, education, voting, police treatment and public programs. Even where overt forms of discrimination have been subdued, the effects of past discrimination live on. In Texas, for example,

> "While many of the overt forms of discrimination wreaked upon Mexican Americans have been eliminated, the long history of prejudice and deprivation remains a significant obstacle to equal educational opportunity for these children. The deep sense of inferiority, cultural isolation, and acceptance of failure, instilled in a people by generations of subjugation, cannot be eradicated merely be integrating the schools and repealing the 'No Spanish' statutes..."
> (U.S. v. Texas (Civil Action Bilingual 5281, Jan. 9, 1981)

In neither his personalnor professional life, has George Paras displayed the least bit of understanding of our history or of our current needs as members of a minority group who are, in large measure, poor, under-educated and without access to legal assistance. Not only is he unfamiliar with the history of Mexican Americans, but with that of the majority culture.

In speaking against the Bakke and De Ronde decision, he said, "The backbone of our country has always been equality, and it always has been equality of opportunity--never equality of results--because if you have equality of results, you have communism. ...It's equality of opportunity that we want, it's equality that made our country great. And I would like to see that become once again a reality." (Senate Committee on Constitutional Amendments, California State Senate, Oct 22, 1981, p. 8) In rejecting "preferential treatment" for minorities, Paras has forgotten about our long tradition of "preferential treatment" for the rich and privileged: the sons and daughters of elite Ivy League alumni who are guaranteed, at birth, places in their parents schools; assured of summer jobs at major law firms, banks, and newspapers; and, upon graduation, assured of admission to the best jobs, the best law schools, the best graduate schools. Achievement has never been entirely a matter of merit in the United States, much more so for the rich than for the poor.

Mr. Paras is openly hostile to any sort of preferential treatment for poor people, even if it is to begin to remedy the total exclusion of minorities from a particular school or profession.

"The necessary time for today's complaining minorities to achieve proportionality," he says.

> "may cover several generations, as it did with other groups formentioned. But is this too great a price to pay for the preservation of the priceless notion of equality? Other groups have paid it in the past; some will have to pay it now." (DeRonde v. Regents of the University of California, 102 Cal, App. 3d, 221, p. 20 (1980)

Mr. Paras' legal opinions regarding the rights of the poor have been relatively mild compared to some of his public statements and personal communications. For example, before his elevation to the appellate court, he opposed new rules of criminal procedure that required all defendants be given notice of their rights to an appeal, along with a free transcript and counsel on the appeal if they could not afford them. In an interview with the Los Angeles Daily Journal, Paras said:

> "The public is getting screwed by all this idiotic obsession of certain of us, supreme courters, judicial counselors, some appellate judges, governors, over a litigant's rights. As if the courts are going to solve all the problems of the world." (Los Angeles Daily Journal, Nov. 1981)

No doubt Mr. Paras' most well-known display of candor in his disdain for the poor was revealed in a personal letter to a former colleague, Judge Cruz Reynoso, with whom Mr. Paras sat on the appellate court. After Mr. Paras resigned from the court, he wrote Judge Reynoso a detailed letter, the highlights of which I feel the Committee should examine. For example, Mr. Paras says to Judge Reynoso:

> "Your problem is that you feel it your obligation to be a professional Mexican rather than a lawyer. Thus you must remain true to the ideals consistently tossed about by the leaders of the so-called Mexican movement. You must ever champion the 'oppressed,' meaning those who so designate themselves, such as criminals, handicapped, welfare recipients, demonstrators, 'minorities,' and miscellaneous other have nots." (Letter from Mr. Paras to Judge Reynoso, August 3, 1981, p. 3, copy attached)

He says further:

> "Your chief problem, from the very beginning, was that you did not come aboard with the intention of rendering traditional judicial service to the public. Instead you arrived with some ill-conceived notion that you, in alliance with the Brown philosophy, should institute reforms, that you should oppose that which the rest of us had been doing for so many years before, and that you should promote the interest of the so-called 'poor' and 'minorities,' to their advantage and to the consequent disadvantage of all others. You were not prepared to look upon and treat all litigants alike."

Mr. Paras is entitled to his opinions; he is entitled to confuse criminals with demonstrators and minorities and the handicapped; he is even entitled to believe that promoting the interests of the poor and minorities to their advantage will necessarily result in disadvantage for all others. But because he holds these views, he should not be entitled to sit on the board of an organization which is dedicated exclusively to promoting the legal rights of the poor.

I urge the Senate to look back to its own report accompanying passage of the Legal Services Corporation Act in 1974, which required "the assurance that the Board members understand and are fully committed to the role of legal assistance attorneys and support the underlying principle of this legislation that it is in the national interest that the poor have full access under law to comprehensive and effective legal services." (Report of Senate Committee on Labor and Public Welfare, S.93-495,93rd Cong., pp 9-10.) Mr. Paras does not meet this requirement and I suspect that he himself would not even contend that he does. Make no mistake about it, Mr. Paras was not selected in order to fulfill the mandate of the Corporation; he was selected to fulfill President Reagan's long-held dream of abolishing it.

In 1971, Justice Harlan noted that "Judicial resources... are increasingly scarce these days. Nonetheless, when we automatically close the courthouse door solely on this basis, we implicitly express a value judgement on the comparative importance of classes of legally protected interests." (Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403, U.S. 388, 411 (1971.) The Legal Services Corporation was established in order to open the courthouse doors to the poor and erase the distinctions between classes of legally protected interests. Should George Paras be confirmed by the Senate, it will be a short time before judicial resources become scarce again and the doors to the courthouse are closed to the poor.

I urge the Labor and Human Resources Committee to reject Mr. Paras' nomination. To do otherwise would be a vote in favor of destruction of the Legal Services Corporation.

Senator QUAYLE. Thank you, Ms. Hernandez.

Ms. Schwartz?

STATEMENT OF BARI SCHWARTZ, EXECUTIVE DIRECTOR, THE COALITION FOR LEGAL SERVICES, WASHINGTON, D.C.

Ms. SCHWARTZ. Thank you, Mr. Chairman.

The Coalition for Legal Services is composed of national organizations and individuals working together to support the continued provision of legal assistance to the poor. I thank you for this opportunity.

We are here today to express two specific concerns. First, we oppose the confirmation of any of the nominees at this time, because the 10 persons whose names are before you would not satisfy the Board composition requirements of the act and its legislative history. Among them, there are no eligible clients, no representatives of organizations involved in the development of legal assistance for the poor, no representatives of legal services attorneys. Indeed, there does not seem to be a single experienced proponent of the Federal commitment to legal assistance for the poor, which the Legal Services Corporation embodies.

Second, we specifically oppose the nominations of William Harvey, William Olson, George Paras, and Marc Sandstrom. William Harvey has consistently advocated the curtailment of the remedies and forums most effective to the redress of the legal grievances of the poor and minorities. As dean of the Indiana University law school, he rejected an opportunity to contribute to the delivery of legal assistance to the poor when he personally vetoed the establishment of a poverty law clinic at the law school. He serves on an advisory board of the Pacific Legal Foundation, a legal advocacy organization which has opposed the interests of low income tenants and homeowners, welfare recipients, unemployment claimants, and farm workers. Our concerns about Mr. Harvey's fitness for the LSC Board are only magnified by his selection by his fellow nominees as purported Chairman of the Board, and we urge his rejection.

William Olson served as team leader of the LSC transition team for President-elect Reagan. There have been consistent indications that Mr. Olson advocated abolition of the Corporation. We would like to know where Human Events got its information when it said that the acting chairman, Mr. Olson, "is believed to have recommended the Corporation's abolition when he served as team leader of legal services during the Reagan transition period."

George Paras' unfitness for the Board we believe has been demonstrated today.

Finally, Marc Sandstrom is personally involved in two activities which automatically disqualify him from Board membership because of the conflicts of interest they raise. He is the executive vice president and general counsel of a savings and loan, a large portion of the commercial practice of which involves the purchase of commercial papers from companies which have sold defective merchandise to low income consumers or which have used illegal credit practices in connection with such sales. There are quite a few pending law suits and administrative complaints filed on behalf of Legal Services clients that are pending against his business interests.

[The prepared statement of Ms. Schwartz follows:]

STATEMENT OF
BARI SCHWARTZ,
EXECUTIVE DIRECTOR OF
THE COALITION FOR LEGAL SERVICES

Mr. Chairman, thank you for the opportunity to present this testimony to the Committee today. The Coalition for Legal Services is composed of national organizations and of individuals working together to support the continued provision of legal assistance to the poor through the Legal Services Corporation.

The legal services community shares a proud history with this Committee and the American Bar Association of common efforts to secure the passage of the Legal Services Corporation Act in the early 1970's, in response to the efforts of presidential appointees to introduce political considerations into the administration of the legal services program. The creation of a private nonprofit corporation outside of the executive branch, to be directed by politically independent board members, was the hallmark of the 1974 Act.

We are here today to underscore the importance we, and this Committee, have always attached to the nominations of board members for the Legal Services Corporation, and to express three specific concerns. First, we oppose confirmation of any of the nominees because the nine persons whose names have been submitted to the Committee, taken as a whole, would not satisfy the board composition requirements of the Act and its legislative history. Among them, there are no eligible clients, no representatives of organizations involved in the development of legal assistance for the poor, no representatives of legal services attorneys; indeed, there does not seem to be a single experienced proponent of the federal commitment to legal assistance for the poor which the Legal Services Corporation embodies. Surely, on a board charged with responsibility for addressing the legal needs of the nation's poor, inclusion of persons experienced in delivery of legal services to the poor is a necessity.

The inclusion of only one minority person among the nine nominees and the exclusion of women provide further reason why these nominees as a composite are unacceptable. We raise this concern not only because we as a community have always stood for the full involvement of minorities and women in professional roles. The unfortunate reality is that minorities and women make up a large proportion of the clientele of legal services because they are disproportionately poor. That fact should be reflected on the Corporation Board.

Second, we specifically oppose the nominations of William F. Harvey, William J. Olson, George Paras and Marc Sandstrom. These nominees have demonstrated outright opposition to access to justice for the poor, which should disqualify them for service on the Legal Services Corporation's Board of Directors.

William F. Harvey has consistently advocated the curtailment of the remedies and forums most effective to the redress of the legal grievances of the poor and minorities. Access to justice, and the protection of fundamental constitutional rights, require resort to the federal courts. Yet he has persistently attacked federal court review of issues of critical concern to the poor and minorities. He has opposed the use of class actions to protect rights guaranteed by the Equal Protection Clause of the Fourteenth Amendment. He has called for state court or state agency review of federal agency action, despite the fact that the nation has entrusted to the federal government the responsibility for meeting critical national needs. Mr. Harvey demonstrates antipathy to the notion that vindication of the rights of Americans must be a national concern not left to the happenstance of where aggrieved persons happen to live. This troubles all of us who look to the Legal Services Corporation as a bastion of concern for the legal needs of low-income people.

As dean of the Indiana University Law School at Indianapolis, Mr. Harvey rejected an opportunity to contribute to the delivery of legal assistance to the poor when he personally vetoed the establishment of a poverty law clinic at the law school. The clinic would have been funded by the city with an annualized grant of about $250,000, yet Mr. Harvey appears to have rejected with his veto this expression of commitment by the city to the legal needs of the poor.

Mr. Harvey serves on an advisory board for a project of the Pacific Legal Foundation, a legal advocacy organization which has opposed the interests of low-income tenants and homeowners, welfare recipients, unemployment claimants, and farmworkers.

For years, Mr. Harvey represented suburbs of Indianapolis in their effort to block a regional desegregation plan. He also prepared the amicus curiae brief on behalf of the Pacific Legal Foundation in the Bakke case. Mr. Harvey, of course, had a right as an individual to undertake these activities. However, qualification for the LSC Board requires some demonstrated commitment to addressing the rights of minorities and the poor. Mr. Harvey's actions show he has consistently aligned himself with positions opposing those rights, while nothing in his record indicates an affirmative effort to address the problems of the poor and minorities in ways alternative to those he opposes.

Our concerns about Mr. Harvey's fitness for the LSC Board are only magnified by his selection by his fellow nominees as purported chairman of the Board. We urge his rejection by the Committee.

William J. Olson served as team leader of President-elect Reagan's LSC transition team. There have been consistent indications, most strikingly a document purporting to be a summary of the transition team's report, that Mr. Olson advocated abolition of the Corporation. Despite a number of Congressional requests, the report has not been made public. The fact that Mr. Olson has not denied favoring abolition of the very entity on whose board he would serve should automatically disqualify him.

He has also maintained a working relationship with Howard Phillips, chairman of the National Defeat Legal Services Committee, stemming from Olson's service at the Office of Economic Opportunity in 1973 under Phillips. (Phillips, who was at the time acting director of OEO, attempted to dismantle the Legal Services program.) While the personal acquaintances of nominees may be beyond the purview of this Committee, the fact that Mr. Olson has done little before or since his nomination to familiarize himself with local legal services programs or the point of view of advocates of the program leads us to seriously question whether he can properly exercise his fiduciary duties as a Board member. We urge that his nomination be rejected.

George Paras, a former state appellate judge, has, in written and oral statements, demonstrated outright hostility to minorities and the poor. He has reiterated his shocking remarks even after his nomination to the Legal Services Corporation Board, in conduct unbecoming to any presidential nominee.

The fact that stewardship of the legal services program requires particular sensitivity to minorities and the poor makes Paras, as author of the following remarks, particularly unfit.

(To a fellow judge:)

> "You...promote the interests of the so-called 'poor' and 'minorities' to their advantage and to the consequent disadvantage of all others. . .

* * *

> "Your problem is that you feel it your obligation to be a professional Mexican rather than a lawyer. Thus you must remain true to the ideals consistently tossed about by the leaders of the so-called Mexican movement. You must ever champion the 'oppressed', meaning those who so designate themselves, such as criminals, handicapped, welfare recipients, demonstrators, 'minorities', and miscellaneous other have nots."

* * *

Paras has defended the letter in which these remarks appeared:

> "There are such things as professional blacks, or professional Greeks, professional Dagos, professional Jews -- people who put their ethnic origin ahead of everything else. That's what I meant." (St. Louis Post Dispatch, Feb. 3, 1982)

Paras has also described U.S. and California Supreme Court opinions with which he disagrees with epithets such as "idiotic" and "pure trash." Inasmuch as one of the purposes of the Legal Services Corporation is to promote the redress of poor people's grievances through the legal system, we are troubled by his cavalier disregard for the rule of law, and have no confidence that he will act to uphold the Legal Services Corporation Act. He must be rejected.

Marc Sandstrom is personally involved in two activities which automatically disqualify him from Board membership because of the conflicts of interest they raise. He is the Executive Vice President and General Counsel of the Great American Savings and Loan Association (formerly San Diego Federal Savings and Loan). A large portion of the commercial practice of Great American involves the purchase of commercial paper from companies which have sold defective merchandise to low-income consumers, or have used illegal credit practices in connection with such sales. Great American has, since 1974, done $150 million in such business with one company alone. That company, Trane Air Conditioning, and Great American are defendants in lawsuits brought by the Legal Aid Foundation of Los Angeles and Fresno-Merced Counties Legal Services. In total, in the past four years, over 20 separate complaints of unlawful consumer practices have been filed by LAFLA against Great American; 36 by the Los Angeles Office of Consumer Affairs; and 23 by the Office of Public Counsel.

Legal services attorneys have also represented low-income community groups in a challenge to Great American under the Community Reinvestment Act, on grounds that its credit practices were unfair to minorities and residents of low-income areas.

In addition, Mr. Sandstrom serves on the board of the Pacific Legal Foundation as its vice chairman. The Pacific Legal Foundation currently is involved in at least three cases in which opposing interests are represented by legal services lawyers. PLF's own Annual Reports indicate that its board provides policy direction to the staff and approves litigation.

In sum, several areas of potential conflict of interest involving policy which may be considered by the Legal Services Corporation Board appear from a review of Mr. Sandstrom's positions with Great American and the Pacific Legal Foundation. These include class action suits by legal services attorneys; representation of groups of poor people; representation of low-income consumers, tenants, farmworkers, welfare recipients, and unemployment compensation claimants, and the ability of programs to recover attorneys fees.

So many potential areas of conflict are likely to arise that we believe it would not be appropriate for Mr. Sandstrom to serve on the Board. We urge rejection of his nomination, in addition to those of Mssrs. Harvey, Olson, and Paras.

Robert Stubbs' nomination raises troubling conflict of interest concerns as well. We await word from him, which he will have opportunity to provide during confirmation proceedings, as to how he intends to avoid conflict of interest problems which may arise given his position as Executive Assistant and Chief Deputy Attorney General for the State of Georgia. He must convincingly demonstrate how he can faithfully execute his fiduciary responsibilities on the Legal Services Corporation Board while maintaining his key policy-level position as a legal officer for the State of Georgia. The state is from time to time challenged by low-income clients who are aggrieved by its actions. If he cannot make such a showing, his nomination must be rejected as well.

Our third concern in these confirmation hearings is that all of the nominees be called upon to disavow any commitment to or support for the Administration's proposal to abolish the Legal Services Corporation and federal funding for legal services. There is serious question as to whether the nominees will act independently of the White House in view of the alarming sequence of events starting last New Year's Eve.

All eleven incumbent Board members' terms had already expired by July, 1981; in fact, five terms had expired when President Reagan took office in January, 1981. Yet the President took no action until the Christmas Congressional recess when he made purported "recess appointments" on December 31 and January 22 under the constitutional recess power. His action gave the appearance of attempting to circumvent the senatorial scrutiny required under the Legal Services Corporation Act. On the heels of the so-called "recess appointments" came announcement of the Administration's FY 1983 budget, which renews the Administration's efforts (unsuccessful last year) to abolish the Legal Services Corporation and federal funding for legal services. Then on March 1, the Administration sent to the Senate the nine names you are reviewing today.

This unfortunate chain of events raises inevitable questions about the commitment of the nominees to the purposes of the Legal Services Corporation. We respectfully urge that all of these questions be examined by this Committee.

Senator QUAYLE. Thank you, Ms. Schwartz.
Ms. Kellock?

STATEMENT OF SUSAN KELLOCK, EXECUTIVE DIRECTOR, EQUAL JUSTICE FOUNDATION, WASHINGTON, D.C.

Ms. KELLOCK. My name is Susan Kellock. I am the executive director of the Equal Justice Foundation, and I appear here today on behalf of the Equal Justice Foundation.

The organization is a national organization of lawyers who commit 1 percent of their salaries to support the organization's efforts to increase access to justice. Our work involves removing primarily financial and procedural barriers that deny or limit access to the legal system for underrepresented persons.

The Equal Justice Foundation is committed to the preservation and expansion of the Legal Services Corporation. The Corporation has definitely proven itself as one of the most cost-effective programs funded by the Government to date.

The Equal Justice Foundation appears here today in opposition to the composition of the nominees that have been appointed to the Board of Directors. We are concerned that these people have not demonstrated a strong commitment to carrying out the mandate of Congress as we know it today, which is that poor people have full access under the law to comprehensive and effective legal services, and that the members be committed to the Corporation's freedom from political control.

I refer to E. Pendleton James' statement in January, shortly after the Board people were nominated, in which he talked about the President having ideological differences with the old Board and that these new appointees represented the President's ideological stamp which he wishes to place on the Legal Services Corporation. The President's only stamp, as we see it, is to stamp out the Corporation, and I refer to the budget plan submitted 4 or 5 weeks after Pendleton James' statement, which states: "The administration proposes that the Corporation not be reauthorized and that no further separate Federal funding be provided for 1982, 1983, or later years."

Further, we oppose these people because none of the nominees has publicly stated a commitment to future public funding of the Legal Services Corporation to any adequate level. Eight of the nine nominees have had no significant involvement during the last 7 years with local legal services programs, whether it be Judicare or a private pro bono program sponsored by the Legal Services Corporation.

Seven of the nine nominees that were interviewed by the Equal Justice Foundation staff members cited restrictions which we consider would impose serious restrictions on their professional duty as attorneys to represent their clients zealously. We object to the composition of the Board as being illegal because no eligible clients are represented, and we are concerned about the lack of representation of women and more minorities on the board.

Specifically, we oppose Mr. Olson, Mr. Sandstrom, Mr. Harvey, and Mr. Paras as nominees to the board.

[The prepared statement of Ms. Kellock follows:]

TESTIMONY

SUSAN KELLOCK
Executive Director
EQUAL JUSTICE FOUNDATION

On Behalf of the Equal Justice Foundation

On behalf of the Equal Justice Foundation, I welcome this opportunity to appear before the Senate Committee on Labor and Human Resources as a public witness during this confirmation hearing for the Legal Services Corporation Board of Directors.

The Equal Justice Foundation is a national organization of lawyers who commit one percent of their salaries to support the organization's efforts to increase access to justice. Our work involves removing procedural and financial barriers that deny or limit access to the legal system for underrepresented persons.

The organization is committed to the preservation and expansion of the Legal Services Corporation (LSC). The Corporation has proven itself to be one of the most cost-effective programs funded by the government, and to be extremely successful, in its initial seven years, in providing comprehensive and effective legal assistance to America's thirty million poor persons. Congress is to be commended for its insistence on maintaining the program. LSC employees, from clerical staff to staff attorneys, are to be congratulated for carrying out your mandate so effectively.

I am here today to present the Equal Justice Foundation's position on the presidential nominees for the LSC Board of Directors. These individuals, if confirmed, will play an important role in shaping the future of the Corporation. They will have influence over the budget process, the right to alter the program's structure, the power to make certain policy decisions affecting the delivery of legal services.

It is important, therefore, that the Board members demonstrate a strong commitment to carrying out the mandate of Congress as we know it today - "that the poor have full access under law to comprehensive and effective legal services" - and that the members be "committed to the Corporation's freedom from political control." Report of the Senate Committee on Labor and Public Welfare (S.93-495, 93rd Cong., 1st Sess.)

It is imperative that members of the Board come to their positions with legal services experience and a demonstration that they understand and are fully committed to the role of legal assistance attorneys. Our research of these candidates reveals a Board composition that the Equal Justice Foundation is compelled to oppose. We offer the following reasons:

1. None of the nominees has publicly stated a commitment to future public funding for the Legal Services Corporation;
2. Eight of the nine nominees have had no significant involvement during the last seven years with a local legal services program, whether it be a judicare

program, or LSC-sponsored private bar pro bono program;

3. Seven of the nine nominees interviewed by the Equal Justice Foundation (EJF) staff members cited restrictions they would consider imposing on the methods used by legal aid lawyers in the delivery of legal services. Some of the restricted areas cited, such as class actions and litigation against local/state governments, would seriously impair the professional duty of attorneys to represent their clients zealously. According to the canons, this includes seeking any lawful objective through legally permissable means and presenting for adjudication any lawful claim, issue, or defense;

4. The composition of the Board is illegal because there is no eligible client representation as required by law;

5. Presently there are no women designated to serve (Josephine Worthy is not among the nominees);

6. There is only one minority person among the nominees.

As for individual nominees, the Equal Justice Foundation opposes the following persons:

1. William Olson. Mr. Olson reportedly advocated abolishing the Corporation while serving as team leader for President Reagan's transition team on the Legal Services Corporation. When asked by members of the press if he, in fact, did recommend abolishment at one time, he continually refused to deny or confirm the report.

2. Marc Sandstrom. Mr. Sandstrom is engaged professionally as General Counsel to the San Diego Federal Savings and Loan (S&L) d/b/a Great American Savings and Loan, and as a member of the Board of Trustees of the Pacific Legal Foundation. In both these capacities, Mr. Sandstrom is engaged in litigation against legal services attorneys in California, which raises a very serious question of conflict of interest should he serve on the Board of Directors of the Legal Services Corporation. More specifically, as General Counsel to the S&L, he has been involved in litigation brought by legal services attorneys against the S&L since 1978. As a trustee of the Pacific Legal Foundation (PLF), Mr. Sandstrom participates in the approval or disapproval of all PLF's decisions regarding involvement in litigation. Presently, PLF is intervening in a suit brought by California Rural Legal Assistance, which is

funded by LSC. PLF represents intervenors on the side of the defendant in the case.

3. George Paras. Mr. Paras has demonstrated, both orally and in writing, hostility to racial and ethnic minorities and poor persons. Most notable is his letter to Cruz Reynoso, an Hispanic appointed to the California Supreme Court, whose nomination was opposed by Mr. Paras. In the letter, Mr. Paras criticized Mr. Reynoso as a "professional Mexican" who favored minorities while serving as an appellate court judge. Later, Mr. Paras told him, "To put it very succinctly and very bluntly, you have been a pain in the ass," and accused him of wanting special favors, considerations, and concessions "because you are who you are." Mr. Paras forwarded a copy of this letter to the State Commission on Judicial Appointments to use in their deliberations of Mr. Reynoso's appointment. He has publicly denounced the California Supreme Court as a left-wing, authoritarian junta. When the Equal Justice Foundation questioned Mr. Paras on his use in an interview with the press of the term "Dago" he said, "To call it an ethnic slur is wrong." His unethical and unjudicial behavior raise serious questions about his qualifications to serve in the interest of poor persons and to set standards for thousands of attorneys employed by the Legal Services Corporation.

4. William Harvey. Mr. Harvey, presently serving as Chairman of the LSC Board, comes to this position with virtually no direct involvement with legal services programs. His positions on affirmative action, federal court jurisdiction, and IRS tax-exempt guidelines for private schools are antithetical to the interests of poor persons. Similarly, his formal affiliation with the Pacific Legal Foundation, which has cases pending against legal services clients and against the interests of poor persons generally, raises serious questions about conflict of interest and about his ability, as an LSC Board member, to carry out his fiduciary duties.

In conclusion, the composition of the Board as represented by the nominees fails to reflect: 1) adequate representation of legal services attorneys; 2) the client community; and 3) organizations involved in the development of legal assistance for the poor. These criteria for Board selection are contained in the Report of the Senate Committee on Labor and Public Welfare to the original LSC Act.

In addition, the Board as a whole has not demonstrated to the satisfaction of the Equal Justice Foundation that it understands and is fully committed to the role of legal assistance attorneys and supports the underlying principle of the

LSC Act that it is in the national interest that poor persons have full access under law to comprehensive and effective legal services. Again, these criteria are included in the same report mentioned above. We urge you not to confirm these individuals unless you are convinced that they are committed to the most effective delivery of legal services for poor persons and that they are fully committed to the Corporation's freedom from political control.

Thank you for the opportunity to present the position of the Equal Justice Foundation.

Senator QUAYLE. Thank you, Ms. Kellock.
Mr. Veney?

STATEMENT OF BERNARD A. VENEY, EXECUTIVE DIRECTOR, NATIONAL CLIENTS COUNCIL, INC., WASHINGTON, D.C.

Mr. VENEY. Thank you, Mr. Chairman. I am the executive director of the National Clients Council, an organization of and for the consumers of legal services.

You have before you a most difficult task. We, in our written testimony, which I would like to ask be part of the record, ask that you not confirm this panel in its entirety. We recognize that we are not talking about ciphers and numbers. We are talking about nine people. We are talking about human beings who have expectations. They have been notified by the President of the United States and have come before you today. Despite your compassion for the nominees, you simply cannot confirm them because, I suggest, you have not established the fact that this board is composed in accordance with the enabling legislation. There is only one eligible client currently serving on the Legal Services Corporation board of directors. That person is a holdover. None of the nominees are, in fact, eligible clients.

I listened with a great deal of interest to determine whether this committee was going to find out today about the nominees' political affiliations. The statute says no more than six of the board may be from the same political party. Clients have no way of getting to that issue; we must depend upon you.

You are looking at the potential directors of a "law firm," if you will, that has over 300 offices around the country that deals with a special kind of law, for a special population. That population, the clients, turns to this committee and ask that you insure that the panel before you as nominees is, in fact, consistent with both the letter and the spirit of the law.

I thank you for the full hearing you are conducting. I hope that you will give full consideration to the merits of the written statement that we have submitted. Thank you.

[The prepared statement of Mr. Veney follows:]

STATEMENT OF

THE NATIONAL CLIENTS COUNCIL

Mr. Chairman, members of the Committee.

My name is Bernard A. Veney and I am the Executive Director of the National Clients Council, (NCC). Ours is an organization of and for low-income people.

NCC has been recognized by the Ford and Carter administrations, committees of the Congress, the Legal Services Corporation and its grantees, the leadership of the American Bar Association, the National Bar Association and others as the only national voice of low-income people regarding civil justice issues. Our testimony has been solicited in the past by committees of the Congress, particularly those having oversight responsibilities for the Legal Services Corporation.

I appear before you today to ask you to do an extraordinarily difficult thing. That is, to reject not just one Presidential nominee but an entire panel of nominees. I do so only after a careful effort to insure that the Office of Presidential Personnel was aware of the issue which underlies our request of you. (See Attachments A and B).

The Legal Services Corporation Act as amended, (Public Law 95-22), at Sec. 1004.(a), states:

> The Corporation shall have a Board of Directors consisting of eleven voting members appointed by the President, by and with the advice and consent of the Senate, no more than six of whom shall be of the same political party. A majority shall be members of the bar of the highest court of any State, and none shall be a fulltime employee of the United States. Effective with respect to appointments made after the date of enactment of the Legal Services Corporation Act Amendments of 1977 but not later than July 31, 1978, the membership of the Board shall be appointed so as to include eligible

> clients, and to be generally representative of the organized bar, attorneys providing legal assistance to eligible clients, and the general public.

On and after December 30, 1981, the President of the United States made ten recess appointments to the Legal Services Corporation. These appointees replaced Directors whose terms had expired but who were holding over in accordance with the provisions of the Legal Services Corporation Act. (One Director, whose term has also expired, continues to serve but is subject to replacement at the pleasure of the President).

Of the ten persons so appointed, nine are attorneys and one is a non-attorney. As far as we can determine, none of these ten persons meets the Act's definition of an eligible client. The Director who is holding over does meet that definition as did one of the Directors replaced by a 1981 recess appointee.

Eight of these recess appointees, plus a replacement for one other, are currently before you for confirmation. We believe that it may be significant that the appointed non-attorney's name has not yet been submitted to this Committee.

We have included with this testimony our analysis of the law and the legislative history regarding the composition question. (See Attachment C). Based on our analysis, we are forced to conclude that confirmation of this panel will only prolong the period of uncertainty concerning the governance of the Corporation.

Some might argue that this situation could be corrected, at some future time, simply by submitting two eligible persons for confirmation. While this may be true, we believe that there will be little impetus to do so since the recess appointee can not only sit until this session of Congress has adjourned, but beyond. Until another person is "qualified", as defined by the Act, members of the Corporation board may legally continue to holdover. Thus, a legal cloud might be cast over actions of the Board for an indefinite period.

We fully appreciate the right of the President to name persons of his choosing to head the Legal Services Corporation. We are also aware that there is a strong desire on the part of individuals within the present administration to change dramatically the manner in which the Corporation operates. We know that there are those who sincerely believe that the federal government should not provide any funding for the provision of civil legal services. Such desires are, however, not the expression of the current will of the Congress. With regard to the Corporation, the Administration must, just as it does in other matters, follow the Act until the Congress has changed it.

Clients seeking assistance from legal services programs are people with critical problems who probably have sharply limited options. The Congress has acted to protect the Corporation from political intrusion and the service providers from interference with their professional judgement. We hope that this Committee will continue to safeguard the client community from the damage of a war between ideologues.

The Report of the Senate Committee on Labor and Public Welfare (S. 93-495) provides what we think are excellent and still applicable criteria to be used to assess the qualifications for nominees to the Corporation Board. That report, at pages 9-10 states:

> The Committee expects that, in exercising its advice and consent function, the Senate will want to review the nominations on the basis of the following primary criteria: (1) a board membership which is adequately representative of the organized bar, legal education, legal services attorneys, the client community, and organizations involved in the development of legal assistance for the poor; (2) the selection of persons who are committed to the Corporation's freedom from political control; and, (3) the assurance that the Board members understand and are fully committed to the role of legal assistance attorneys and support the underlying principle of this legislation that it is in

> the national interest that the poor have full access under law to comprehensive and effective legal services.

The client community is gravely concerned by the possibility that several of the nominees may not meet one or more of these standards. So great is this concern that we are asking that the Committee either reject the panel in its entirety, suggest to five of the nominees that they withdraw or recommend that they not be confirmed.

We have not had the opportunity to question any of the individual nominees. Thus, in our efforts to determine their "fitness to serve," we can only be guided by their past actions, their present statements and to some degree by organizations to which they belong.

While we urge the withdrawal or rejection of several of the nominees, we do not feel that these are evil people who lead lives dedicated to some Machiavellian plot to destroy poor people. We are sure that they have acted in what they felt to be the best interest of that portion of society which they know and function in. The problem for us is that some appear to have little awareness of, or sympathy for, the needs and aspirations of low income people.

We might be less concerned if there was to be an opportunity for the nominees to "ease into" their decision making over a period of time. When the statute was written, care was taken to guard against a complete turnover. This was the case as the governance of the Corporation moved from persons appointed by President Ford to individuals named by President Carter. The unusual circumstance of the replacement of the entire Board was not contemplated.

The situation now does not allow for such transition. The Directors you confirm will be setting policy under enormous time pressure. Decisions now pending will effect the reauthorization of the Corporation, the appropriation request for FY'84 and beyond, the modes of service delivery and very possibly the promulgation of new regulations. The process used and the end products of this decision making will obviously have significant impact on the client community.

We, therefore, feel that it is essential that anyone you confirm meet the criteria cited above. The Directors must be persons who have had at least some exposure to the delivery of legal services to low income people and/or a demonstrated commitment to advocacy on behalf of low income people.

Low income people have come to rely upon Corporation funded programs as the means to guard against bureaucratic misinterpretation or misapplication of statutes; as shields against unscrupulous business practices; as vehicles to assist community groups in efforts leading toward economic self-sufficiency; and, as the major method for safeguarding our property and other rights. Therefore, the client community will examine closely those the Senate confirms in an effort to see if there remains a belief that only through federal funding can the Constitutional assurances of equal access to justice for all be truly achieved. We fear that if five of the nominees are confirmed, the client community will believe that the program is to be fundamentally altered even absent specific Congressional action to amend the law.

Equally important is the fact that several of the nominees appear to have serious potential conflict of interest problems. The Act and the Code of Professional Responsibility provide the Committee with guidance in this area.

Ethical Consideration 9-6 states:

> Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect for the law and for the courts and the judges thereof; to observe the Code of Professional Responsibility; to act as a member of a learned profession, one dedicated to public service; to cooperate with his brother lawyers in supporting the organized bar through the devoting of his time, efforts, and financial support as his professional standing and ability reasonably permit; to conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of his clients and of the public; and to

> strive to avoid not only professional impropriety but also the appearance of impropriety. [Emphasis added]

The client community understands the Code to be the guide for the conduct of all who are admitted to practice whether they are acting in behalf of a fee paying client, representing an indigent person or serving on a body such as the Corporation's Board.

Mr. William Olsen, served as the Chairperson of the Presidential Transition Task Force on the Legal Services Corporation. It is generally believed that Mr. Olsen took the position that the Corporation should be abolished. If this is true, there exist a conflict of interest and we feel the Committee can reasonably question his ability or willingness to implement the current statute. If it is not true, the Committee should then urge him to make public his recommendation so that may at least be resolved.

Mr. Olsen has also demonstrated that he may not appreciate the efforts taken to insure that the Corporation is an entity separate from the Executive branch, subject to both the law as passed by the Congress and its duly enacted Bylaws.

Immediately upon his nomination, Mr. Olsen, usurping a prerogative of the Chairperson, convened a "meeting" of the Board. Only three of the Directors were physically present, the remainder participated by way of a conference call hookup. The use of the telephone, the lack of notice, the absence of members of the public were without precedent. This unique meeting ended with Mr. Olsen being elected Chairperson and the passage of resolutions which could have had most serious consequences upon the client community.

A suit has been brought which seeks judicial determination of the right of recess appointees to act as Directors of the Corporation prior to Senate confirmation. We believe that Mr. Olsen, acting as the Chairperson, sought representation from the Justice Department. In the mind of the client community this is just another indication of his lack of regard for the fact that the Corporation was intended to be a private rather than a public body. Had he felt otherwise, we think he would have retained a law firm just as he had done when he sought an initial legal opinion on the matter.

Clearly, Mr. Olsen is well acquainted with the Corporation's enabling legislation, its Bylaws, regulations and operations. As previously indicated, he spent several months studying the Corporation. His were not the actions of an uninitiated or uninformed individual.

From our perspective, Mr. Robert Stubbs' professional responsibilities create an inherent conflict of interest. Mr. Stubbs is one of the highest ranking persons on the staff of the Attorney General of the State of Georgia. His professional responsibilities make him an integral part of the mechanism used to defend state agencies against actions brought by legal services programs in behalf of eligible clients.

It is difficult to imagine how he could possibly serve as a Director of the Corporation and not at least appear to have a conflict of interest whenever that body was determining policy regarding suits against government entities, the right to attorney fees and similar issues.

We are equally concerned about the negative impact Mr. Stubbs' service on the Corporation Board might have on clients within the State of Georgia. Persons seeking relief from the actions of a state agency might well question how zealous the legal services program could be. The client community is aware of the fact that Corporation Directors make decisions which impact on continued funding and have the authority to enact regulations limiting the scope and form of representation.

We are aware that a previous Director of the Corporation was confirmed who was an Assistant Attorney General. However, in that instance Senate approval was given only after satisfactory evidence had been received that the Attorney General was willing and able to remove the nominee from all cases in which legal services programs were providing representation. Further, the previous nominee had no policy making, evaluatory, or case review responsibilities as related to other members of the Attorney General's office. We can not see how such assurances would be possible in Mr. Stubbs case.

Two of the nominees, William Harvey and Marc Sandstrom are members of the Board of the Pacific Legal Foundation. This organization has, on many occasions, opposed the interest of low-income people and it is our understanding that Directors of the Foundation are directly involved in the selection of the issues to be addressed.

Mr. Harvey, while Dean of a law school, vetoed his institution's acceptance of a state appropriation to create and operate a poverty law clinic. Such a clinic would have substantially increased the access of low-income people to legal services at a time when there was considerable unmet need in the area in which his school was located.

Mr. Sandstrom is a Vice-President and the chief legal officer of a Savings and Loan Association which has been subject to a number of suits by legal services programs for unfair and unlawful collection practices against eligible clients. While we recognize that he may have acted under directions from superiors, it is our belief that he either concurred or failed to exercise independent professional judgement.

The client community has little confidence that persons who have been advocates against low income people can be expected to suddenly implement a statute which was designed to assist us.

We think that Mr. George Paras is a clear cut instance of a person who should be advised to withdraw his name from consideration. His unfortunate publication of his private communication with Judge Cruz Reynoso is, we think, ample evidence of the fact that he lacks the sensitivity or the commitment to be a Director of a Corporation established to serve poor people. In that letter, Mr. Paras characterizes the oppressed as ". . . those who so designate themselves, such as criminals, handicapped, welfare recipients, demonstrators, 'minorities', and miscellaneous other have nots."

We hope that the Committee will agree with us that the issues we raise are serious ones which merit full consideration.

We appreciate this opportunity to appear before you.

Attachment A

OFFICE
D.C.

NATIONAL CLIENTS COUNCIL

IS THE NATIONAL ORGANIZATION OF THOSE PERSONS ("CLIENTS") WHO
ARE SERVED BY THE LEGAL SERVICES PROGRAMS AROUND THE COUNTRY.

REGIONAL OFFICES
ATLANTA, GEORGIA
CHICAGO, ILLINOIS
DENVER, COLORADO
LOS ANGELES, CALIF.

Lupe Sanchez
President
BOARD OF DIRECTORS

825 15TH STREET, N.W.
SUITE 500
WASHINGTON, D.C. 20005

January 6, 1982

Mr. E. Pendleton James
Assistant to the President
For Presidential Personnel
1600 Pennsylvania Avenue, N.W.
Washington, D. C. 20500

Dear Mr. James:

I am writing to bring to your attention a possible oversight on the part of the Office of Presidential Personnel with regard to the composition of the Legal Services Corporation's Board of Directors.

Section 1004(a) of the Legal Services Corporation Act requires that there be at least two persons who, when nominated, would be eligible to receive services under the criteria set forth in the enabling legislation.

My understanding is that Mr. Robert S. Stubbs, II, an attorney, has been nominated to the seat now held by Mrs. Ramona Toledo Shump. As you know, Mrs. Shump is one of the two eligible clients currently serving on the Corporation's Board.

The Congress, over the years, has taken progressive steps to insure increased client participation in the governance and oversight of legal services at the national, state and local levels. In 1977, the statute was amended to include clients on the Corporation's Board and to increase the participation of eligible persons in policy making positions at the local level. In 1981, the House of Representatives passed an amended statute which requires that the Governor-appointed state level oversight bodies include eligible clients. There is every reason to believe that the Senate will enact a similar provision.

Thus, existing law and probable amendments all point to a Congressional intent to increase, not diminish, the role of recipient representatives in insuring that the purposes of the Act are fulfilled.

We are fully cognizant that your office has its own capabilities to identify persons for service in the Administration. However, the National Clients Council stands ready to assist in the process of identifying possible client nominees. We conducted a national search last year for this purpose and would be most happy to make the information garnered available to you at your request.

May we take this opportunity to thank you for your attention to this matter.

Very truly yours,

Lupe Sanchez
Chairperson

BOARD OF DIRECTORS
President
Lupe Sanchez
President Emeritus
Marvelan Hamilton
First Vice President
Nerevnne Hollis
Second Vice President
Glenn Warren
Third Vice President
Cornelius Hill
Recording Secretary
Virginia Haas
Corresponding Secretary
Baron Michael
Treasurer
Rosie Stanley
Parliamentarian
George Moore
Sergeant-At-Arms
Renwick Tassell

• • •

Charlene Barnes
Jessie Corona
Lauri de Jesus
Clara Garrett
Ventura Gutierrez
Joseph Haggerty
Ethel Harris
Lucinda Harris
Aretha Hudson
Manuel Huertas
Leroy Jones
Ellsworth Morgan
Constance Sonon
Josephine Shuller
Ida Tann
Paul Velez
Edna F. Williams
Nessie White

Attachment B

NATIONAL CLIENTS COUNCIL, INC.

"around the conference table"

February 22, 1982

Mr. E. Pendleton James
Assistant to the President
for Presidential Personnel
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20520

Dear Mr. James:

Mr. Lupe Sanchez, Chairperson of the National Clients Council, wrote you on January 6, 1982, regarding the composition of the Legal Services Corporation Board of Directors. You were kind enough to reply and there has been an exchange of information between Ms. McQuown of your staff and myself.

We write again because the problem may now be somewhat more complex and, from our interpretation of the enabling legislation, still unresolved.

To date, the President has nominated nine attorneys and one lay person for seats on the eleven person Corporation Board. As you know, there is one [illegible]rson who is a hold-over subject to further Presidential action. It appears [illegible] the only eligible client among these eleven persons may be the hold-ov[illegible]s. Josephine Worthy.

Ms. Annie Laurie Slaughter, the lay person, may not, as far as we can determine, meet the definition of an eligible client as set forth in either the statute or the Corporation's regulations. By raising this point, we in no way wish to imply that Ms. Slaughter should not be appointed. Even if she is not an eligible client, Ms. Salughter certainly could qualify under the statutory requirement that the Board include a representative of the general public.

May we encourage your review of the total board composition prior to submission for confirmation. If there is a problem with the composition, our hope would be that the solution would not be the withdrawal of Ms. Slaughter. Clearly, it would appear more in keeping with the purposes of the program to act instead to reduce the overwhelming numerical superiority enjoyed by the attorneys.

There is one other point we would ask that you consider. For the past several years, the Corporation Board has had representatives from the Hispanic and Native American communities. While there is no statutory mandate requiring consideration of ethnicity in the naming of members, it seems that it would be useful to continue the practice of substantial minority representation on this policy making body.

We appreciate your attention to this matter and stand ready to assist in anyway you may deem appropriate.

Very truly yours,

Bernard A. Veney

Bernard A. Veney
Executive Director

ATTACHMENT C

LEGISLATIVE HISTORY OF LSC BOARD COMPOSITION

The Legal Services Corporation Act as amended, (Public Law 95-22), at Sec. 1004.(a), states:

> The Corporation shall have a Board of Directors consisting of elven voting members appointed by the President, by and with the advice and consent of the Senate, no more than six of whom shall be of the same political party. A majority shall be members of the bar of the highest court of any State, and none shall be a fulltime employee of the United States. Effective with respect to appointments made after the date of enactment of the Legal Services Corporation Act Amendments of 1977 but not later than July 31, 1978, the membership of the Board shall be appointed so as to include eligible clients, and to be generally representative of the organized bar, attorneys providing legal assistance to eligible clients, and the general public.

When orginally enacted, the Legal Services Corporation Act did not contain any requirements that clients be Directors of the Corporation. The Amendment originated in the Senate which passed in 1977 an amendment which stated:

> At least three persons appointed to fill vacancies occurring after January 1, 1977, and before July 30, 1978, shall be, when selected for appointment, eligible clients and at least one such person shall be appointed to fill a vacancy occurring prior to January 1, 1978. Following July 30, 1978, at least

It may, however, be instructive to refer to the Act as originally passed in 1974 to examine the language used when the Congress felt that a single person might meet the criteria it wished to establish.

With reference to the governing bodies for recipients of Legal Services Corporation funds, the orginial Act, (P. L. 93-355) at Sec. 1007 (c), states:

> In making grants or entering into contracts for legal assistance, the Corporation shall insure that any recipient organized solely for the purpose of providing legal assistance to eligible clients is governed by a body at least 60 percent of which consist of attorneys who are members of the bar of a State in which the legal assistance is to be provided (except that the Corporation (1) shall, upon application, grant waivers to permit a legal services program, supported under section 222(a)(3) of the Economic Opportunity Act of 1964, which on the date of enactment of this title has a majority of persons who are not attorneys on its policy-making board to continue such a non-attorney majority under the provisions of this title, and (2) may grant, pursuant to regulations issued by the Corporation, such a waiver for recipients which, because of the nature of the population they serve, are unable to comply with such requirement and which include at least one individual eligible to receive legal assistance under this title. [Emphasis added.]

The statute defines an "eligible client" as being any person unable to afford legal assistance. The Corporation, using the regulatory authority conveyed upon it in the Act, provides further deliniation of the term. In the Comment to its regulation Part 1611 – Eligibility, the Corporation states:

> The Legal Services Corporation Act provides little guidance for establishing a maximum income

The Corporation, as of March 31, 1981, and continuing to date, has determined that its resources still require the maintenance of the 125% standard. (See attached).

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility; Revised Appendix

AGENCY: Legal Services Corporation.

ACTION: Final rule; revised appendix.

SUMMARY: The Legal Services Corporation is required by law to establish maximum income levels for individuals eligible for legal assistance. This document revises specified income levels to reflect amendments to the Official Poverty Threshold as defined by the Office of Management and Budget.

EFFECTIVE DATE: May 4, 1981.

FOR FURTHER INFORMATION CONTACT: Phyllis Fong, Legal Services Corporation, 733 Fifteenth Street NW., Suite 700, Washington, D.C. 20005, (202) 272-4010.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act, 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that income shall be taken into account along with other specified factors. Section 1611.3(b) of the Corporation's Regulations establishes a maximum income level equivalent to one-hundred and twenty-five percent (125%) of the Official Poverty Threshold as defined by the Office of Management and Budget. The revised figures equivalent to 125% of the Official Poverty Threshold are as follows:

Legal Services Corporation Poverty Guidelines Appendix A of Part 1611 is revised to read as follows:

For all States except Alaska and Hawaii

	Maximum income
Size of family unit[1]	
1	$5,388
2	7,113
3	8,838
4	10,563
5	12,288
6	14,013
For Alaska[2]	
1	[illegible]
2	[illegible]
3	[illegible]
4	13,210
5	[illegible]
6	17,512
For Hawaii[3]	
1	[illegible]
2	[illegible]
3	10,175
4	[illegible]
5	14,135
6	[illegible]

[1] For family units with more than six members, add $1,725 for each additional member in a family.

[2] For each family unit with more than six members, add [illegible] for each additional member in a family.

[3] For family units with more than six members, add [illegible] for each additional member in a family.

Dated: March 28, 1981.

Mario Lewis,

General Counsel, Legal Services Corporation.

[FR Doc. 81-[illegible] Filed 4-1-81; 8:45 am]

BILLING CODE 6820-35-M

Senator QUAYLE. Thank you, Mr. Veney.
Mr. Eisenberg?

STATEMENT OF HOWARD B. EISENBERG, EXECUTIVE DIRECTOR, NATIONAL LEGAL AID & DEFENDER ASSOCIATION

Mr. EISENBERG. Thank you, Mr. Chairman. I, too, have a prepared statement which I ask to be made a part of this record.

Senator QUAYLE. All prepared statements will be made a part of the record.

Mr. EISENBERG. Our organization is the oldest national organization concerned about the availability of legal services to poor persons founded in 1911. We join in much of the anxiety regarding the nature of these nominees as a group, not being representative of those types of people that this committee and the Senate of the United States has set forth in the legislation and in the legislative history.

Perhaps in the brief time that I have orally to tell you about our position, I should explain why we oppose specifically the nomination of William Olson and George Paras. The December 31 meeting of the board of directors, about which we have heard much, was called on approximately 12 hours notice, in an effort, Mr. Olson said, to bring under control the grants for the coming year.

The fact of the matter is that when President Reagan took office, half of the board of the Legal Services Corporation had terms that had already expired. Within 6 months he could have appointed all of the positions on the board—that is, by the middle of 1981. Instead, he waited until the morning of December 31, 1981. He took an action which was, as was acknowledged here, totally unnecessary.

Moreover, the action taken by the previous board was entirely consistent with what the Legal Services Corporation had done in its 5 previous years. After public notice, at a public hearing, the Legal Services Corporation board adopted a budget and grants were sent out in December as they always have been. The fact that not one member of the board, the new board, knew of that fact strikes me as another indication of the impropriety of this group without specifically indicating one person or another. The fact that Mr. Olson believed himself to be knowledgeable on this issue strikes me as an indication of his lack of knowledge and, indeed, from everything that has been written, that he attempted to put a freeze on the Legal Services grants in an inappropriate manner and in a manner directed from the White House.

With regard to Mr. Paras, with due respect to what was said here, the issue is not his opposition to Cruz Reynoso. The issue is the grossest insensitivity to the types of people represented by Legal Services. You do not refer to people as "professional Mexicans," "professional Dagos," or "professional Jews" when your job is to defend their rights as a member of this board. I think his testimony today is further indication of why he should not be confirmed, and we urge you to reject both Mr. Olson and Mr. Paras.

[The prepared statement of Mr. Eisenberg follows:]

STATEMENT OF HOWARD B. EISENBERG
Executive Director
National Legal Aid and Defender Association

Mr. Chairman, I am Howard B. Eisenberg, Executive Director of the National Legal Aid & Defender Association; thank you for the opportunity to testify today on President Reagan's nominations to the Board of Directors of the Legal Services Corporation (LSC).

The National Legal Aid & Defender Association (NLADA) was founded in 1911 by members of the private bar who were concerned about the availability of legal services to poor persons. For more than 70 years, NLADA has worked to ensure that access to justice is not restricted because of a person's lack of wealth. We were instrumental in establishing most traditional legal aid societies in the United States and were a leader in the efforts to create federal funding for civil legal services.

We hope to work closely with the new board of the Legal Services Corporation, as we worked closely with the boards appointed by Presidents Ford and Carter. Yet, we are mindful of the Reagan Administration's position on legal services to poor persons. Contemporaneously with submitting these names for confirmation, President Reagan has recommended that the Legal Services Corporation be abolished and that all federal funds for legal services be eliminated.

Overall we believe that the criteria by which this Committee must consider the nominees to the Board of the Legal Services Corporation are established explicitly in the Legal Services Corporation Act and in the history of this legislation. Applying these standards, we conclude that serious questions are raised which require close scrutiny by this Committee regarding the propriety of the nominess as a group. Moreover, we conclude that neither William Olson nor George Paras meets the criteria for membership on the LSC Board and urge this committee to reject their nominations.

In 1981, in numerous votes of both houses, this Congress made clear its intent to continue the Legal Services Corporation as an effective, efficient expenditure of government funds for a legitimate and vital purpose. This Committee's role in the Board confirmation process is critical to ensuring that the Congressional purpose in continuing this agency is maintained.

We believe that to fulfill its obligations to uphold the letter and spirit of the Legal Services Corporation Act and Congressional intent, this Committee must assure itself that the Board nominees are:

- committed to carrying out the statutory mandate to provide legal services to poor people;
- committed to supporting a level of funding adequate to meet this goal at its current level of fulfillment;
- representative of legal services attorneys, the client community, and organizations involved in legal services, as well as of the private bar and legal education;
- free from political control of any one party or the Administration; and

- concerned about and sensitive to the needs and desires of the poor community, which the Corporation serves.

Allow me to elaborate on these points.

The President does not have the right to name Board members who will violate the Legal Services Act, and Congressional intent, by working to terminate the Corporation, whether directly, by internal regulation, or by attrition of funding.

Nominees must support the concept of federally funded legal services to poor persons at a funding level adequate to meet the needs now being met. Further decreases in funds beyond the 25% sustained in 1981 will cripple this program. Internal restrictions not consistent with Congressional intent will have the same effect.

The Report of the Senate Committee of Labor and Public Welfare to the original Legal Services Corporation Act * makes clear that the Board should be adequately representative of the organized bar, legal education, legal services attorneys, the client community, and organizations involved in the development of legal assistance for the poor. The President has appointed no representatives of the client community, nor anyone who is either a legal services attorney or involved in the development of legal assistance for the poor on either a compensated or volunteer basis. This failure to nominate a more representative group of persons is a matter of significant

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* P.L. 93-355, S. 93-495, 93rd Cong. 1st Sess.

concern, which should be addressed by this Committee. Moreover the history of the Act, as evidenced by this Committee's report, makes it clear that persons appointed to the LSC Board must be free from political control. In light of the President's desire to abolish the Corporation it is imperative that this Committee satisfy itself that each nominee will exercise judgment independent from that of the Administration.

Above all, the spirit of the Legal Services Corporation Act calls for Board members who are keenly sensitive to the poor community's needs and responsive to its viewpoint. Others within the legal and poverty communities have raised objections to several nominees. We believe that these concerns are valid and require serious inquiry by this Committee.

We question whether the ten persons the President has nominated meet the criteria specified in the statute and in the history of the Act. Close scrutiny is required to assure that, as a group, those confirmed are committed to the continuation of this progam in the manner provided by law and repeatedly endorsed by Congress. We further conclude that neither William Olson nor George Paras meets the statutory requirements for membership on the LSC Board and urge this Committee to reject their nominations.

As I have indicated, the cardinal criteria for membership on this Board are support for the statutory mandate of the Legal Services Corporation, political independence, and support for an adequate level of funding for this program. Mr. Olson has been publicly identified as working with the Committee to Defeat Legal Services in efforts calculated to terminate this agency. The conservative publication Human Events identified Mr. Olson as working with the Director of the Committee and with persons in the Administration to bring about termination of the Corporation. Mr. Olson has repeatedly refused to say whether or not he is personally committed to the continuation of the program. In addition, he has refused to reveal the opinions he expressed regarding LSC as head of the President's transition team studying this agency, any directions he received from the White House prior to the December 31, 1981 meeting of the Regan nominees to the LSC Board, or his ongoing relationship with the Committee to Defeat Legal Services and its Director. Mr. Olson fails manifestly to meet any of the criteria for confirmation, indeed his activities make him an obviously inappropriate person to serve on this Board.

An equally important criterion for membership on the Corporation Board is a sensitivity to the needs and desires of the people served by this agency. In this respect, Mr. Paras has demonstrated that he is not qualified for confirmation. He has shown the grossest insensitivity to poor people and minorities in public comments regarding California Supreme Court Justice Cruz Reynoso and in later comments attempting to clarify his statement. His characterization of Justice Reynoso, a distinguished jurist and lawyer, as "a professional Mexican," as well as his criticism of Justice Reynoso for being concerned about the plight of poor people, leaves no doubt that Mr. Paras is not the type of person who should govern a program specifically created for assisting poor people, many of whom are minorities.

The statutory mandate and legislative history are clear. This committee should confirm these nominees only if they meet the requirements of law. We urge this committee to compare each nominee and the entire group to the criteria provided and determine whether the President has complied with the Act by nominating persons committed to the continuation of this program at an adequate level of funding. Furthermore, it is apparent to us that William Olson and George Paras are inappropriate nominees to this board, and we urge this committee to reject their nominations.

Thank you again for this opportunity; I would be happy to answer any questions.

Senator QUAYLE. Thank you, Mr. Eisenberg.

Mr. Torres?

STATEMENT OF ARNOLDO S. TORRES, EXECUTIVE DIRECTOR, LEAGUE OF UNITED LATIN AMERICAN CITIZENS

Mr. TORRES. My name is Arnoldo Torres. I am the executive director of the League of United Latin American Citizens, this country's oldest and largest Hispanic organization.

Our community has a tremendous investment in the Legal Services Corp. Obviously, with the reductions and the limitations put on the passage of the legal services authorization, we find that probably a lot fewer people will be serviced. Obviously, with the Hispanic concerns, 16.6 were served in 1979; in 1981, 13.3. So we are very concerned.

The thing that really bothers us the most is that while so many things have been cut from under us, the one thing that we were hoping that at least Congress would be a little more consistent and a little bit more giving would be on the issue of legal representation. Obviously, with the reductions in the funding of LSC, we find that perhaps there is some intolerance or, better yet, a concern for frugality.

Perhaps the best example of the intentions by this administration on how to deal with the problems of the poor is reflected in the nomination and no better one than Mr. Paras' nomination. It is truly an embarrassment to the administration and you have to ask yourself some questions. Is the administration so naive and so ignorant and lacking in their ability to do assessments on the backgrounds of these individuals that they did not find out that this gentleman had made these statements. This is truly an embarrassment and does, perhaps, reflect where the administration lies.

I would trust that this committee would not confirm Mr. Paras. But more importantly, the issue of Mr. Olson and the issue of Mr. Harvey I think really leaves a lot of questions that must be asked. We hope the committee can return and get into more detail on the gentlemen who have been mentioned as very questionable. I would urge the committee to take that action, but I would underscore that Mr. Paras is perhaps the worst person who should be appointed to any commission of this type.

We are very sorry that the nomination was submitted, and we are hopeful that this committee will have absolutely no difficulty in rejecting the nomination of Mr. Paras.

[The prepared statement of Mr. Torres follows:]

PRESENTED BY
ARNOLDO S. TORRES
LULAC NATIONAL EXECUTIVE DIRECTOR

GOOD DAY, MY NAME IS ARNOLDO S. TORRES, I AM THE NATIONAL EXECUTIVE DIRECTOR OF THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC), THIS NATION'S OLDEST AND LARGEST HISPANIC ORGANIZTION WITH OVER 100,000 MEMBERS ORGANIZED IN 44 STATES. IT IS LULAC'S PURPOSE SINCE ITS BIRTH IN 1929 TO IMPROVE THE QUALITY OF LIFE FOR HISPANIC-AMERICA. ONE OF THE MAIN INGREDIENTS IN THIS QUEST HAS BEEN THE ASSURANCE THAT WE, AS RESIDENTS OF THIS GREAT COUNTRY, WILL BE PROVIDED EQUAL PROTECTION UNDER THE LAW AND EQUAL ACCESS TO THE JUDICIAL PROCESS. FOR THESE REASONS, WE EXTEND OUR APPRECIATION TO THIS COMMITTEE FOR ALLOWING US TO PRESENT OUR CONCERNED VIEWS ON THE NOMINATION OF MR. GEORGE PARAS, NOMINEE TO THE BOARD OF THE LEGAL SERVICES CORPORATION (LSC).

BEFORE WE DISCUSS OUR REASONS FOR OPPOSING THE NOMINATION OF MR. PARAS WE WOULD LIKE TO PRESENT OUR VIEWS OF THE LEGAL SERVICES CORPORATION (LSC) WHICH OUR ORGANIZATION AND COMMUNITY EMPHATICALLY SUPPORT. SINCE THE CREATION OF LSC BY CONGRESS IN 1974, IT HAS WORKED TO MAKE EQUAL JUSTICE UNDER LAW A REALITY FOR THIS COUNTRY'S ESTIMATED 30 MILLION PEOPLE LIVING AT OR BELOW

THE POVERTY LEVEL WHO ARE ELIGIBLE FOR LEGAL ASSISTANCE. WE RECOGNIZE THAT THIS IDEAL WILL PERHAPS NEVER BE ATTAINED, BUT NONETHELESS, IT DEFINITELY IS A PURPOSE WHICH WE AS A NATION SHOULD STRIVE FOR AND COMMIT OURSELVES TO.

AS MEMBERS OF THIS COMMITTEE YOU ARE WELL AWARE THAT "LEGAL SERVICES" HAS ITS BASIS IN THE PRINCIPLES OF FAIR PLAY AND EQUALITY BEFORE THE LAW. THOSE VALUES ARE FUNDAMENTAL TO OUR CONSTITUTIONAL FORM OF GOVERNMENT. WE HAVE CHOSEN A SYSTEM FOR THE PEACEFUL RESOLUTION OF DISPUTES THROUGH AN ADVERSARIAL JUDICIAL PROCESS. IF THIS CONSTITUTIONAL INTEREST IN FAIRNESS AND DUE PROCESS IS TO HAVE MEANING, THEN INDIVIDUALS MUST HAVE ACCESS TO OUR SYSTEM OF JUSTICE, REGARDLESS OF THEIR ABILITY TO PAY FOR LEGAL HELP. THE NEED FOR EFFECTIVE COUNSEL IS PARTICULARLY CRITICAL FOR THE POOR, BECAUSE FUNDAMENTAL PERSONAL INTERESTS ARE MOST OFTEN AT STAKE -- LOSS OF CUSTODY OF THEIR CHILDREN, EVICTION FROM THEIR HOMES, TERMINATION OF SUBSISTENCE INCOME, REPOSSESSION OF ESSENTIAL PERSONAL PROPERTY, LOSS OF PERSONAL LIBERTY.

LEGAL SERVICES PROVIDES THE "SAFETY NET" THAT ENABLES THE POOR TO GAIN ACCESS TO THE GOODS, SERVICES, AND LEGAL REMEDIES THAT THIS SOCIETY,THROUGH ITS ELECTED OFFICIALS, HAS DETERMINED SHOULD BE AVAILABLE. IT MAKES LITTLE DIFFERENCE WHAT THE LAW PROVIDES IN TERMS OF BENEFITS OR PROTECTIONS FOR THE POOR, UNELSS THE INTENDED BENEFICIARIES HAVE THE CAPACITY TO ENFORCE THAT LAW -- A CAPACITY THAT LEGAL SERVICES PROVIDES.

LEGAL SERVICES IS ESSENTIAL IN A SOCIETY THAT VALUES RESPECT FOR THE LAW. THE AVAILABILITY OF LEGAL ASSISTANCE HAS DONE MUCH TO DEMONSTRATE TO THE POOR THAT THE LAW NEED NOT BE VIEWED AS AN ENEMY, THAT THE LEGAL SYSTEM CAN BE MADE TO WORK FOR THEM JUST AS IT WORKS FOR POWERFUL INTERESTS IN THIS COUNTRY.

DATA COLLECTED FOR AN AMERICAN BAR ASSOCIATION SURVEY OF LEGAL NEEDS INDICATES THAT SOME 7.5 MILLION POOR PERSONS (A QUARTER OF THE 30 MILLION CLASSIFIED AS POOR) FACE CIVIL LEGAL PROBLEMS ANNUALLY. THESE PROBLEMS INVOLVE CONSUMER LAW, HOUSING LAW, ADMINISTRATIVE BENEFITS, (WELFARE, PENSIONS, SSI/SSP, MEDICAID) AND FAMILY LAW. UNFORTUNATELY, WE FIND THAT ONLY 20% OF THE POOR'S LEGAL NEEDS CAN BE ADDRESSED BY LEGAL SERVICES. IN ADDITION, WHILE WE MAY SEE THESE LEGAL ISSUES AS BEING SOMEWHAT MUNDANE, WE ASSURE YOU THAT FOR A POOR PERSON SUCH MATTERS ARE ASSOCIATED WITH SURVIVAL. THESE MATTERS ARE OF A CRISIS NATURE WHEN HEALTH COVERAGE, HOUSING, EMPLOYMENT AND FAMILY ISSUES ARE THREATENED AND IN JEOPARDY.

LEGAL SERVICES CORPORATION (LSC) INDICATES THAT AT THE END OF FISCAL YEAR 1976, 9.2 MILLION POOR PERSONS HAD MINIMUM ACCESS TO LEGAL SERVICES, 8.1 MILLION POOR PERSONS WERE IN LEGAL SERVICE PROGRAM AREAS, BUT WERE WITHOUT MINIMUM ACCESS, AND THAT 11.7 MILLION POOR PERSONS WERE LIVING IN AREAS WHERE THERE WERE NO PROGRAMS AVAILABLE. THESE STATISTICS REFLECT A LAUDABLE EFFORT

BY LSC TO IMPROVE "ACCESSIBILITY" OF THE LEGAL SYSTEM TO THE POOR. HOWEVER, "MINIMUM ACCESS" DEFINED AS THE EQUIVALENT OF TWO ATTORNEYS FOR 10,000 ELIGIBLE CLIENTS, IS FAR FROM BEING A PRACTICAL GOAL WHEN WE RECOGNIZE AND UNDERSTAND THE CONSTANT LEGAL DIFFICULTIES CONFRONTING THE POOR. NEVERTHELESS, THIS MERELY SERVES TO UNDERSCORE THE CONTINUED NEED TO PROVIDE LEGAL SERVICES TO AMERICA'S POOR. IN 1979, LSC DATA REVEALED THAT 16.6% OF CLIENTS SERVED WERE HISPANIC. AS OF FEBRUARY 1982 WE FIND THAT 13.7% OF CLIENTS SERVED BY LSC ARE HISPANIC. WE ALSO WOULD ADD THAT BETWEEN 1979 AND 1980 AN ESTIMATED 570,000 MORE HISPANICS WERE REPORTED (U.S. BUREAU OF THE CENSUS) TO BE UNDER THE POVERTY LEVEL. THESE STATISTICS REVEAL THAT WHILE OUR UNIVERSE OF NEED HAS EXPANDED THE ABILITY OF LSC TO SERVICE HAS BEEN CURTAILED SIGNIFICANTLY. IF WE GO DEEPER THAN THESE STATISTICS WE FIND THAT THIS REDUCTION RESULTS IN ADDITIONAL HUMAN SUFFERING FOR OUR COMMUNITY AND THE POOR OF THIS COUNTRY.

A FURTHER EXAMINATION OF THE CURRENT STATUS OF LSC REVEALS THAT THERE ARE 4,564 ATTORNEYS SERVING THE POOR WHICH IS A REDUCTION OF 1,773 FROM 1981. ALSO, WE FIND THAT IN 1981 THERE WERE 9,202 NON-ATTORNEYS SERVING THE POOR WHILE IN 1982 THERE WAS A REDUCTION OF 2,860 BRINGING THE CURRENT TOTAL TO 6,342. THESE REDUCTIONS IN PERSONNEL REFLECT THE REDUCTION IN THE BUDGET PROVIDED TO LSC BY CONGRESS FROM $321 MILLION IN FY'1981 TO $244 MILLION IN FY'1982. IN VIEW OF THIS SCENARIO, IT IS

EVIDENT THAT SIGNIFICANTLY LESS RESOURCES ARE BEING TARGETED TO ADDRESSING THE EVER GROWING NEEDS AND NUMBERS OF AMERICA'S POOR.

RECOGNIZING THE SAD STATE OF AFFAIRS THAT THE HISPANIC COMMUNITY AND THE POOR FIND THEMSELVES IN DUE TO ECONOMIC HARD TIMES, AND LESS AND LESS LEGAL SERVICES TO DEAL WITH PROBLEMS INCURRED BY THIS SITUATION, WE ARE MADE TO HAVE TO DEAL WITH THE APPOINTMENTS OF VARIOUS INDIVIDUALS TO THE BOARD OF THE LSC WHICH HAVE PUBLICLY AND PROFESSIONALLY DEMONSTRATED INSENSITIVITY TO THE PLIGHT AND CONDITIONS OF THE DISADVANTAGED INTHIS COUNTRY. WE WOULD REFER YOU TO THE ST. LOUIS POST-DISPATCH ARTICLE (ATTACHMENT A) OF FEBRUARY 3, 1982 WHICH OUTLINES THIS ADMINISTRATION'S PURPOSE IN APPOINTING INDIVIDUALS TO THE BOARD OF THE LSC. PRIMARILY THE ARTICLE IS BASED ON CONVERSATIONS WITH A WHITE HOUSE OFFICIAL WHO "HELPS PLAN ADMINISTRATION STRATEGY ON THE LEGAL SERVICES CORPORATIONS." IT GOES ON TO STATE THAT WHILE THE ADMINISTRATION MAY NOT HAVE ANY-MORE SUCCESS IN CONVINCING CONGRESS TO ABOLISH THE LSC, THAT...

> WHAT THE ADMINISTRATION IS HOPING FOR ULTIMATELY IS FOR THE STATES TO NEGOTIATE CONTRACTS WITH LOCAL BAR ASSOCIATIONS TO PAY PRIVATE LAWYERS TO REPRESENT THE POOR. THIS WOULD WEAKEN OR PERHAPS ELIMINATE THE CURRENT SYSTEM, UNDER WHICH MOST LEGAL SERVICES ON BEHALF OF THE POOR ARE PROVIDED BY FULL-TIME LAWYERS ON THE CORPORATION'S STAFF.

IT IS EVIDENT TO LULAC THAT THE NOMINATION OF MR. GEORGE E. PARAS CLEARLY REFLECTS THIS INTEREST OF THE ADMINISTRATION. IN MR. PARAS WE FIND A PERSON WHO PUBLICLY INDICATES A BACK-

GROUND OF BEING POOR BUT BLATANTLY DEMONSTRATES HIS INTOLERANCE FOR MINORITY AND THE POOR'S CONCERNS. IN HIS CELEBRATED LETTER* (AUGUST 3, 1981) TO CALIFORNIA SUPREME COURT JUSTICE, THE HONORABLE CRUZ REYNOSO, THEN AN ASSOCIATE JUSTICE, THIRD DISTRICT COURT OF APPEAL, HE WRITES,

> YOUR PROBLEM IS THAT YOU FEEL IT YOUR OBLIGATION TO BE A PROFESSIONAL MEXICAN RATHER THAN A LAWYER. THUS YOU MUST REMAIN TRUE TO THE IDEALS CONSISTENTLY TOSSED ABOUT BY THE LEADERS OF THE SO-CALLED MEXICAN MOVEMENT. YOU MUST EVER CHAMPION THE "OPPRESSED," MEANING THOSE WHO SO DESIGNATE THEMSELVES, SUCH AS CRIMINALS, HANDICAPPED, WELFARE RECIPIENTS, DEMONSTRATORS, "MINORITIES," AND MISCELLANEOUS OTHER HAVE-NOTS.
>
> IT IS THIS DEDICATION NOT TO JUSTICE AND LAW BUT TO THE POOR AND OPPRESSED THAT HAS PREVENTED YOU FROM REALIZING YOUR POTENTIAL AS AN EFFECTIVE JUDGE. IN VIRTUALLY EVERYTHING I SAW YOU DO, THIS WAS YOUR MOTIVATION."

THE CALLOUSNESS AND BITTERNESS OF MR. PARAS IS WELL INDICATED IN THIS PASSAGE, HOWEVER, PERHAPS MORE CLARIFYING IS HIS DEFENSE OF CALLING JUDGE REYNOSO A "PROFESSIONAL MEXICAN" WHICH WAS "THERE ARE SUCH THINGS AS PROFESSIONAL BLACKS, OR PROFESSIONAL GREEKS, PROFESSIONAL DAGOS, PROFESSIONAL JEWS-- PEOPLE WHO PUT THEIR ETHNIC ORIGIN AHEAD OF EVERYTHING ELSE. THAT'S WHAT I MEANT." (ST. LOUIS POST DISPATCH, 2/3/82)

IN ADDITION, MR. PARAS WROTE THE APPEALS COURT OPINION IN DERONDE V. REGENTS OF THE UNIVERSITY OF CALIFORNIA, THAT PROHIBITED A PREFERENTIAL ADMISSIONS POLICY USED AT THE UNIVERSITY

*ATTACHMENT B.

OF CALIFORNIA-DAVIS LAW SCHOOL. IN MARCH, THE CALIFORNIA SUPREME COURT OVERTURNED HIS RULING WHICH HE INDICATES PLAYED A MAJOR ROLE IN HIS RETIRING FROM THE BENCH. PERHAPS THE MOST INTERESTING ASPECT IN THIS EPISODE IS THE FACT THAT THE AUTHOR OF THE SUPREME COURT DECISION JUDGE FRANK RICHARDSON WHO IS CONSIDERED TO BE A FRIEND AND FELLOW CONSERVATIVE COLLEAGUE OF MR. PARAS, JUDGE RICHARDSON ALSO HAD OPPOSED AFFIRMATIVE ACTION BUT INDICATED THAT THE DERONDE CASE WAS "AIDED AND CONTROLLED" BY THE U.S. SUPREME COURT'S RULING IN THE BAKKE CASE WHICH WAS VIRTUALLY IDENTICAL.

SINCE THESE DECISIONS, MR. PARAS HAS AVAILED HIMSELF THROUGH HIS LEGAL PRACTICE, TO LOBBY IN FAVOR OF A STATE CONSTITUTIONAL AMENDMENT WHICH WOULD PROHIBIT AFFIRMATIVE ACTION PROGRAMS AS A MATTER OF STATE LAW.

MR. PARAS, IN OUR OPINION, REFLECTS AN INTOLERANCE, INSENSITIVITY AND NON-COMMITMENT TO INSURING THAT THE POOR ARE TRULY REPRESENTED THROUGH THE LEGAL PROCESS PROVIDED BY THE LSC. AS A MEMBER OF THE BOARD OF LSC, HE MUST "EVER CHAMPION THE 'OPPRESSED,"...HANDICAPPED, WELFARE RECIPIENTS, MINORITIES." YET, HE HAS DEMONSTRATED SUCH DISDAIN AND BITTERNESS TO THOSE WHO HAVE CONCERNED THEMSELVES WITH THE PLIGHT OF INDIVIDUALS OUTSIDE OF AMERICA'S MAINSTREAM SOCIETY.

THIS NOMINATION HAS MANY PARALLELS WITH THE NOMINATION OF JUDGE CHARLES B. RENFREW FROM CALIFORNIA IN DECEMBER, 1979 TO SERVE AS THE U.S. DEPUTY ATTORNEY GENERAL.

IN A 1977 SOUTHWESTERN UNIVERSITY LAW REVIEW ARTICLE, AUTHORED BY MR. RENFREW, HE DISCUSSED THE APPLICATION OF AFFIRMATIVE ACTION POLICIES FOR ADMISSIONS TO GRADUATE SCHOOL. HE WROTE THAT "IF PREFERENTIAL ADMISSIONS POLICIES ARE CONSTITUTIONALLY PERMISSABLE, THE JUSTIFICATION MUST NECESSARILY BE THAT A MINORITY'S CURRENT UNDERREPRESENTATION IN A PARTICULAR FIELD CAN BE SAID, WITH SOME CERTAINTY, TO BE THE RESULT OF A PERVASIVE AND LONGTERM PATTERN OF DE JURE DISCRIMINATION BY THE CAUCASIAN MAJORITY." (WHAT HE TERMS THE RECTIFICATION PRINCIPLE). FURTHERMORE, MR. RENFREW CONCLUDED THAT "BECAUSE NO OTHER GROUP CAN CITE A HISTORY OF DE JURE DISCRIMINATION OF SIMILAR MAGNITUDE NOR CLAIM COMPARABLY EGREGIOUS RESULTS, A NATIONAL RECTIFICATION PRINCIPLE MUST PERHAPS, FAIRLY AND LOGICALLY, BE LIMITED TO AMERICAN INDIANS AND BLACKS."

THE HISPANIC AND ASIAN COMMUNITIES WERE APPALLED AT THIS CONTENTION AND RAISED OUR OBJECTIONS BEFORE AND DURING MR. RENFREW'S CONFIRMATION HEARINGS. HE TOO, HAD TAKEN A POSITION WHICH WAS CONSIDERED HIGHLY INSENSITIVE AND COUNTER-PRODUCTIVE TO HISPANICS. HOWEVER, HIS CONTENTION WAS WITHOUT THE INFLAMMATORY LANGUAGE AND BLATANT INTOLERANCE EXHIBITED BY MR. PARAS. AFTER EXTENSIVE MEETINGS WITH MR. RENFREW, HE INDICATED THAT HIS STATE-

MENTS WERE BASED ON THE EXPERIENCES OF PERSONAL FRIENDS AND THAT HE DISCUSSED HISPANICS IN A "GENERIC SENSE" AND HAD NOT EXAMINED THE CONDITIONS CONFRONTING EACH SUBGROUP (I.E. MEXICAN-AMERICANS, PUERTO-RICANS, CUBAN-AMERICANS). IN MY PERSONAL DEALINGS WITH HIM, I AND MANY OTHERS FOUND HIM TO BE REASONABLE, WILLING TO DISCUSS OPENLY AREAS OF DISAGREEMENT AND ABLE TO ADMIT ERROR WHILE ATTEMPTING TO BETTER EDUCATE AND SENSITIZE HIMSELF TO OUR COMMUNITY'S CONCERNS.

ON THE OTHER HAND, MR. PARAS HAS MADE ABSOLUTELY NO EFFORT, BUT APPEARS TO HAVE GONE OUT OF HIS WAY, TO DEMONSTRATE HIS NARROW, INTOLERANT, AND INSENSITIVE VIEWS OF MINORITIES AND THE POOR, AND THOSE ENTITIES WHICH ARE COMMITTED TO ALLEVIATING THEIR PROBLEMS. UNLIKE HIS FRIEND, CALIFORNIA SUPREME COURT JUSTICE RICHARDSON, WHO IS A FELLOW CONSERVATIVE AND OPPOSED TO AFFIRMATIVE ACTION BUT DISAGREED WITH HIM ON THE DE RONDE CASE CITING U.S. SUPREME COURT PRECEDENT, HE IS UNABLE TO ACCEPT THE LAW OF THE LAND AND WORKS FOR A STATE CONSTITUTIONAL AMENDMENT PROHIBITING AFFIRMATIVE ACTION. PERHAPS CONGRESSMAN BARRY FRANK (D-MASS.) HAS BEST STATED (CONGRESSIONAL RECORD, 3/4/82, ATTACHMENT C) THE NEED TO WITHDRAW THIS NOMINATION BY OFFERING,

> I AM SHOCKED BY THE NATURE OF THESE STATEMENTS. COMING FROM A PERSON WHO IS BEING NOMINATED TO SERVE ON A BOARD, ONE OF WHOSE FUNCTIONSIS TO PROTECT THE LEGAL RIGHTS OF MINORITIES AND POOR PEOPLE, IT IS CLEAR THAT MR. PARAS IS ILL-SUITED TO SERVE IN THAT CAPACITY. IT IS ONE THING TO HAVE HONEST DIFFERENCES ON THE BEST METHOD TO DELIVER LEGAL SERVICE TO THE NATION'S POOR. BUT IT IS QUITE ANOTHER MATTER TO NOMINATE A PERSON WITH A CLEAR INTOLERANCE FOR ANYONE WHO TAKES HIS OR HER ETHNIC HERITAGE SERIOUSLY. THE PRESIDENT SHOULD WITHDRAW MR. PARAS' NOMINATION AT ONCE.

LULAC WHOLEHEARTEDLY CONCURS AND URGES THIS COMMITTEE, ON BEHALF OF THE HISPANIC COMMUNITY, TO OPPOSE THE NOMINATION OF MR. GEORGE PARAS, NOMINEE TO THE BOARD OF THE LEGAL SERVICES CORPORATION (LSC).

ATTACHMENT A

St. Louis Post-Dispatch, February 3, 1982

Legal Services Corp. Threatened By Agenda Given To Reagan Appointees

[illegible] taking over the federal [illegible] a year ago, President [illegible] Reagan's administration has made sharp changes in the funding, the performance, and even the mission of many agencies, large and small. In some cases the president has given [illegible] of an agency to those who [illegible] private life. A [illegible] Post-Dispatch Washington [illegible] has examined how [illegible] has affected [illegible] agencies and [illegible] is the second of six [illegible]

By William Freivogel
Post-Dispatch Washington Bureau

WASHINGTON — The Reagan administration expects its new board at the Legal Services Corp. to consider sweeping changes, including a plan to turn most of the agency's money over to the states, a well-informed administration official told the Post-Dispatch.

Legal Services sets policy for the federal program providing lawyers and legal aid for poor people.

The official said President Ronald Reagan had selected a board that he hopes will remake the corporation from the inside while the administration continues its efforts to get Congress to abolish it.

The official, who asked not to be named, helps plan administration strategy on the Legal Services Corp.

Reagan failed to persuade Congress to abolish the corporation last year. But he managed to cut its budget by 25 percent and propose new restrictions on the kinds of suits it could file.

Those cuts already are being felt. The program in St. Louis, for example, reports it has had to turn away clients it previously had served. And nationally, the number of lawyers in the program is expected to decline to 4,200 from about 6,200 over the next year.

Few on Capitol Hill expect the administration to be any more successful this year than last in getting Congress to abolish the corporation and turn its funds over to the states. But the administration's agenda for its new board could achieve the same effect.

What the administration is hoping for ultimately is for the states to negotiate contracts with local bar associations to pay private lawyers to represent the poor. This would weaken or perhaps eliminate the current system, under which most legal services on behalf of the poor are provided by full-time lawyers on the corporation's staff.

The administration wants to turn over the functions of the Legal Services Corp. to private attorneys, he said, but not through the so-called "Judicare" program. Under that program, Legal Services would reimburse private lawyers who represented poor people. Judicare, said the official, "is nothing more than medicare for lawyers."

The administration official said it would make more sense for the federal funds to go to the states directly because they would be tougher than the corporation has been in negotiating arrangements with private bar associations. States would require bar associations to furnish more free service than the corporation has been able to do, he said.

The official said that another top priority of the new board would be the elimination of the 17 specialized centers — called backup centers — that seek legal reforms aimed at helping broad groups of poor people. One such center, specializing in juvenile law, is at St.

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Agency

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Louis University.

The administration believes that these centers have been "armies of the left," the official said.

The overall aims of the agenda the administration has put before the Legal Services board are to provide "one-on-one" legal services for the poor and to bring an end to the filing of broader, class-action suits designed to change government policy, the official said.

Legal Services advocates contend that the class-action suits are valuable for helping the poor. For example, a class-action suit filed by Legal Services attorneys in St. Louis won higher welfare benefits in many states.

Some advocates contend that states should not be entrusted with the funds for the program because state agencies are themselves the subject of many legal grievances of the poor.

> *Few expect the administration to be any more successful this year than last in getting Congress to abolish the corporation. But the administration's agenda for its new board could achieve the same effect.*

Dan Bradley, outgoing president of the corporation, said the new board probably could turn the corporation's money over to the states, but not without contradicting the intent of Congress. The law says that state governments can receive money from the corporation only if the board makes a "special finding" that legal services will not be adequately provided otherwise.

This was written into the law because several states, including California during Reagan's term as governor, were in contention with the legal services programs in the late 1960s. The intent of the law was to keep the states from interfering in the programs, Bradley said.

The new board that Reagan has appointed to run the corporation is controlled by men who have opposed the corporation in the past or have opposed suits filed on behalf of the poor or minorities. Two have some background of supporting Legal Services suits.

Reagan has appointed 10 of the 11 members now on the board, and has the power to appoint the 11th.

Here are the backgrounds of the new board members and the views of some of them on Legal Services.

William Olson, acting chairman, is a Washington lawyer and chairman of the Fairfax County, Va., Republican Party. During the Nixon administration he worked in the Office of Economic Opportunity under its director, Howard J. Phillips. Phillips tried to cut back the legal services program then and has since become the leading critic of the Legal Services Corp.

When he headed the Reagan transition team on legal services last year, Olson favored abolishing the corporation, some team members said. Olson declined to comment on that report.

George E. Paras, a former California appeals court judge, said in an interview that he had initially opposed government involvement in legal services.

He said when he was a young lawyer, the bar in Sacramento provided legal services for the poor without government assistance. He said he would prefer that approach, but added, "I just don't think you could go back to that once the government begins paying for things like that."

Paras recently has been criticized for a letter to a former colleague on the appeals court, Cruz Reynoso, opposing Reynoso's elevation to the state supreme court. In the letter, Paras said Reynoso's social views were similar to those "first proclaimed by Karl Marx."

"Your problem," Paras wrote Reynoso, "is that you feel it is your obligation to be a professional Mexican rather than a lawyer. Thus you must remain true to the ideals consistently tossed about by the leaders of the so-called Mexican movement . . .

"You must ever champion the 'oppressed,' meaning those who so designate themselves, such as criminals, handicapped, welfare recipients, demonstrators, 'minorities,' and miscellaneous other have-nots."

Paras defended the letter in a telephone interview. "You know," he said, "there are such things as professional blacks, or professional Greeks, professional Dagos, professional Jews — people who put their ethnic origin ahead of everything else. That's what I meant."

Paras also opposed affirmative action programs in an appeals court opinion declaring illegal an admissions policy favoring minorities at the Law School of the University of California at Davis.

Robert Sherwood Stubbs, a native of University City, Mo., and executive assistant to the attorney general of Georgia, has directed that state's defense against numerous Legal Services suits, including a challenge to conditions in Georgia state prisons.

He said he questioned whether the corporation should file class action suits, sue governments, lobby for legislation or file suits on behalf of criminals. The corporation is prohibited from representing people in criminal cases. But it has traditionally been able to represent prisoners in civil suits, as was the case in the Georgia prison suit. A court found prison conditions unconstitutional and ordered the state to remedy them.

David E. Satterfield, a Democrat, represented the Richmond, Va., area in Congress for 16 years until his retirement in 1980. He said in an interview that he knew little about the Legal Services Corp.

He said he did not recall how he had voted on legal services issues in Congress. Records show that he opposed the establishment of the corporation in 1974. Thereafter, he voted for every proposal to restrict or abolish the corporation.

William F. Harvey, former dean of the Indiana University Law School, wrote a brief to the U.S. Supreme Court in the landmark Bakke case challenging affirmative action programs. He also has represented suburban Indianapolis school districts attempting to avoid being drawn into a metropolitan school desegregation plan.

Marc Sandstrom is executive vice president and general counsel of San Diego Federal Savings and Loan, which is being sued by a California legal services program. The suit accuses the bank of permitting foreclosures on home loans when the homeowners did not keep up with payments on home improvement loans.

Harvey, Sandstrom and Paras have been advisers to the Pacific Legal Foundation, a not-for-profit law firm that describes itself as dedicated to the values of free enterprise, private property and limiting the role of government.

The president of the Pacific Legal Foundation, Ronald A. Zumbrun, is expected to be appointed to the 11th seat on the Legal Services Corp. board and to be named its chairman.

Zumbrun was deputy director of legal affairs for the California Department of Social Welfare when Reagan was governor. He defended the state against several suits filed against it by Legal Services programs.

One Reagan appointee with some Legal Services experience is Howard H. Dana Jr., who was Reagan's campaign chairman in Dana's home state of Maine. Dana helped Legal Services lawyers win a suit in the Supreme Court forcing the state to pay for legal fees in some civil rights cases.

He is one of the few Reagan appointees who said he had asked for a job on the corporation.

The other Reagan appointee who has had some background with Legal Services is Clarence McKee, a Washington lawyer who worked in Reagan's presidential campaign. He worked at a Legal Services program in college. Later he was an aide to former Sen. Jacob K. Javits, R-N.Y., and Sen. Charles McC. Mathias Jr., R-Md. He also was an assistant to Benjamin L. Hooks, executive director of the NAACP, when Hooks was a member of the Federal Communications Commission.

McKee said he favored the concept of legal services for the poor, but was not certain whether the system of having a paid staff of lawyers was the best way to provide it. Lawyers in private practice should have more of a role, he said.

Ann Slaughter of St. Louis was appointed by Reagan to represent legal services clients. She said she did not know much about the Legal Services Program but thought the poor should have access to lawyers.

For the last 10 years, Mrs. Slaughter has worked with organizations helping victims of crimes. It was through that work that she came into contact with the Republicans who recommended her to the White House. She and McKee are the only blacks among the Reagan appointees to the board.

The 10th Reagan appointee is Harold D. DeMoss, a Houston lawyer who specializes in real estate and oil and gas law

Reagan could have appointed a new board for the corporation last summer. But an administration official said the president delayed to avoid undercutting his attempt to abolish the corporation.

That delay gave the old board and its staff a chance to lobby in Congress successfully for continuation of the corporation. In addition, the policies of the old board remained in effect.

Until appointing the new board, the only impact the Reagan administration had on the agency was indirect, coming mainly in its support of legislation forcing the program's advocates to accept a 25 percent budget reduction.

The new board that Reagan has appointed to run the corporation is controlled by men who have opposed the corporation in the past or have opposed suits filed on behalf of the poor or minorities.

The primary impact of those cuts is being felt in the legal services offices across the country, with the Washington staff of the corporation having been reduced by 45 percent.

Programs such as the Research Institute for Legal Assistance, which financed 4- to 5-month studies of legal problems of the poor, have been cut out. The corporation's staff training program also is being phased out. And the National Clearinghouse on Legal Services, which publishes information about the legal problems of the poor, will receive no more funds after 1983.

It is uncertain how far or fast the new board can go in reshaping the corporation. Bradley was authorized by the old board to sign contracts in December with all legal services agencies, including the 17 specialized centers. The new board called a hasty meeting on New Year's Eve to strip Bradley of the power to commit funds. But by that time the contracts had been signed.

Olsen says he is seeking a legal opinion on whether the new board must honor the contracts. Meanwhile, Bradley continues to send out checks based on the contracts.

NEXT: New directions for the Federal Trade Commission.

ATTACHMENT B .

Court of Appeal
Third Appellate District
State Library and Courts Building
Sacramento, California [illegible]

George E. Paras
Associate Justice

August 3, 1981

The Honorable Cruz Reynoso
Associate Justice
Third District Court of Appeal
Sacramento, California 95814

My Dear Cruz:

Along with letters to my other colleagues, I felt it appropriate to write this farewell note to you. Were it not for the fact that you recently asked me to express any ideas I might have, I would have written you a short and pleasant few words. But since you asked in effect for constructive criticism, I shall give it, and I know there is no way in the world you will fail to think that it is intended to offend you personally. It is not. I am simply recapping events of the past and using them to suggest your improvement in the future.

By the way, no one in the Court knows anything of this letter, not even Pat. I am having it done at my law office.

Cruz, you have all the qualifications essential to a fine appellate court justice. Your chief problem, from the very beginning, was that you did not come aboard with the intention of rendering traditional judicial service to the public. Instead you arrived with some ill-conceived notion that you, in alliance with the Brown philosophy, should institute reforms, that you should oppose that which the rest of us had been doing for so many years before, and that you should promote the interests of the so-called "poor" and "minorities," to their advantage and to the consequent disadvantage of all others. You were not prepared to look upon and treat all litigants alike. You measured the outcome of a case as often as you could, not by its abstract merit, but by the relative economic standing of the parties. He who had not always prevailed in your thinking against him who had.

Accordingly you never cast a vote against a welfare claimant, no matter how idiotic the claim. You constantly worried that employers, police, or district attorneys would "get away" with something. You never voted to deny relief to a person who had failed to follow the claim procedures of the Tort Claims Act. You were always "bothered" by the fact that some criminal received the punishment he deserved. You distrusted trial judges, refusing to accord them a presumption of valid rulings. Your judicial philosophy was expressed literally and rather clearly in this fashion: the role of the judge is to protect the defendant (in a criminal case) and the poor (in a civil case); the People and the non-poor are strong enough to take care of themselves. This attitude is ridiculous. Where do the People find justice, regardless of their strength, when the judge rules against them because he must favor the defendant? Where do corporations find justice when the ruling is against them simply because they are not "poor"? Your attitude treats justice as synomous with victory for the have nots, a nice socialistic philosophy first proclaimed by Karl Marx many years ago and now still espoused by those who euphemistically call it a "redistribution of wealth."

You and I never got along primarily because of this Robin Hood theory. It came to a head in the deRonde case in which you took a wholly indefensable position, in which our Supreme Court indefensably in turn supported you. The gibberish you uttered in the course of making all but Blacks, Mexicans, Indians, etc. second class citizens is an insult to your own intelligence. You undoubtedly have forgotten this by now, because it suits your ethnic allegiance to forget it, but we had a very long and serious discussion about minority preferences just after the first Backe case authored by Mosk, which you recall was six to one in its holding that any minority preference contravenes the equal protection clause. We discussed it in the context of minority musicians trying out for the San Francisco Symphony who first insisted that they audition with a screen separating them from the judge; then when they saw that this bit of impartiality resulted in the selection of too few of them, they demanded a visual audience. You then voiced the view that the blind auditions were naturally more just and correct. You voiced full agreement with the Mosk opinion. You stated unequivocally that you did not feel "minorities" had any right to preference, but only to equality, meantime agreeing with me that we should do everything possible to recruit, educate, train, promote and otherwise strive to give them full opportunity to achieve equality. In fact, I enclose herewith a photocopy of a little note you sent me just after that conversation; it illustrates the view you expressed.

What happened to your convictions between that conversation (1977) and 1980 when we authored deRonde? The Federal Backe decision happened, and that's all you needed. You repudiated your prior expressions, and I am convinced not because you truly saw things differently but only because you would not now abandon your constituents, the MAPA group for example, who were so elated by Justice Powell's idiotic distinction between minority status as a "quota" and minority status as a "factor." Your dissent in our deRonde decision is pure trash, just like the majority opinion authored by Richardson in the Supreme Court. You have taken us back to Plessey v. Ferguson, and you expect us to like it. Can you accept a literal regression back to the Plessey doctrine? Of course you can't (even though your people never were included in that ignominy). Then how do you expect me to accept it?

Your problem is that you feel it your obligation to be a professional Mexican rather than a lawyer. Thus you must remain true to the ideals consistently tossed about by the leaders of the so-called Mexican movement. You must ever champion the "oppressed," meaning those who so designate themselves, such as criminals, handicapped, welfare recipients, demonstrators, "minorities," and miscellaneous other have nots.

It is this dedication not to justice and law but to the poor and oppressed that has prevented you from realizing your potential as an effective judge. In virtually everything I saw you do, this was your motivation.

You continued this inclination in your expression of preference when we hired the first staff attorney after your arrival. We interviewed seven people, one of whom was of Mexican descent. He had the worst grades, the least writing ability, the most inappropriate background, and the fewest overall qualifications. You voted him number one. Why? Can you truly believe that he would have been an asset to the Court under the circumstances?

You bottlenecked all of us and our work until the ninety day rule was adopted and came to our rescue. Our cases were stacked in your office for months on end, as long as a full year, for reasons I only partly understand. You insisted upon participation to the utmost in every aspect of the Court's activity, but were never prepared to make the necessary sacrifice in time and effort to make it work as the rest of us did. When you saw me help the Court's congestion by taking a dozen "turkeys" and deciding them (correctly) off the briefs in short opinions (without the necessity of going through staff attorneys) you wanted some of that action; you got it, with six cases, most of which have stayed undecided in your office since last December. You wanted to participate in settlement conferences, something which made me proud of you at the time, yet you were not willing to organize your efforts so as to even keep abreast of the cases or to respond to the attorneys' needs. When you could not even process routinely a Notice of Termination of Settlement Conference so as to promptly start the briefing time running, a simple matter of marking the face sheet "not settled" and sending it to my office, you certainly did no service to the Court or to the public. I leave the Court today with thirty-three settlement conferences handled by you in 1980 still unresolved and still in a state of utter confusion, even though I have been trying assiduously for the past six months to work with you to at least find out how and where they stand.

To put it very succinctly and very bluntly Cruz, you have been a pain in the ass! You came aboard believing that you were entitled to a specific minority preference as a judge of the Court, because you are who you are. You have wanted special favors, special considerations, special concessions that none of the rest of us have wanted or needed. All we ever sought was to do the work of the Court and get it all out as expeditiously and competently as possible. You wanted and apparently still want to share in everything, but to slow the entire Court down to your pace and your degree of inferior productivity. Even when I correctly decided the loyalty oath case as a "turkey," you felt that it should have gotten more "complete" treatment, i.e., that it should have consumed ten times the effort for the same product.

I hope you will change. You showed some signs of it in your treatment of the Medical Malpractice Reform Act. You showed nothing but the same old blind adherence to your conceived duty to minorities when you joined the Supreme pack recently in reversing a death penalty decision. My fond hope is that you are truly as political as I think you are, and that once you achieve stardom by elevation to the Supreme Court, your genuine talents and instincts for true and even-handed justice will come to the fore.

For years I have been bewildered by the fact that you and I should have seen virtually everything eye to eye, coming from almost the identical backgrounds. We both come from immigrant parents, both at the time of the depression, both very poor, both long treated by the "Nordics" of our society as something less than normal. Yet we have agreed upon virtually nothing. I think I have now reached the right conclusion as to why this is so. My major premise was wrong. I don't believe you were ever genuinely poor. You were the son of an immigrant alright, but you never knew true poverty or need; nor were you personally ever oppressed. I also don't believe that you ever felt the real sting of discrimination. Had you suffered these experiences, we would have had to think alike.

I can only wish you well in the future, hoping that you will choose just to be a good lawyer and a good American; the rest will then take care of itself.

Sincerely,

GEORGE E. PARAS

GEP:ad

enclosure

THE PRESIDENT'S NOMINEE TO THE LEGAL SERVICES CORPORATION BOARD: A REVEALING LETTER

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 4, 1982

● Mr. FRANK. Mr. Speaker, I have witnessed with great alarm the President's continued attempts to undermine the very successful Legal Services Corporation, attempts which have been resoundingly rejected by this House. I have been particularly disturbed recently by the process by which the President has nominated new members of the Board of Directors of the Corporation—filling these nominations as recess appointments instead of asking for immediate Senate review. But even more distressing is the record of at least one of these nominees, George Paras of California. In a letter to a former judicial colleague cited in a recent edition of the St. Louis Post-Dispatch, Mr. Paras is quoted as accusing his colleague of being a professional Mexican rather than a lawyer. In defending this obnoxious remark, Paras stated:

> You know, there are such things as professional blacks, or professional Greeks, professional Dagos, professional Jews—people who put their ethnic origin ahead of everything else.

I am shocked by the nature of these statements. Coming from a person who is being nominated to serve on a board, one of whose functions is to protect the legal rights of minorities and poor people, it is clear that Mr. Paras is ill-suited to serve in that capacity. It is one thing to have honest differences on the best method to deliver legal service to the Nation's poor. But it is quite another matter to nominate a person with a clear intolerance for anyone who takes his or her ethnic heritage seriously. The President should withdraw Mr. Paras' nomination at once.

An excerpt from the Post-Dispatch article follows:

> George E. Paras, a former California appeals court judge, said in an interview that he had initially opposed government involvement in legal services.
>
> He said when he was a young lawyer, the bar in Sacramento provided legal services for the poor without government assistance. He said he would prefer that approach, but added, "I just don't think you could go back to that once the government begins paying for things like that."
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> Paras recently has been criticized for a letter to a former colleague on the appeals court, Cruz Reynoso, opposing Reynoso's elevation to the state supreme court. In the letter, Paras said Reynoso's social views were similar to those "first proclaimed by Karl Marx."
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> "Your problem," Paras wrote Reynoso, "is that you feel it is your obligation to be a professional Mexican rather than a lawyer. Thus you must remain true to the ideals consistently tossed about by the leaders of the so-called Mexican movement . . .
>
> "You must ever champion the 'oppresse meaning those who so designate themselve such as criminals, handicapped, welfare r cipients, demonstrators, 'minorities,' an miscellaneous other have-nots."
>
> Paras defended the letter in a telephon interview. "You know," he said, "there ar such things as professional blacks, or pre fessional Greeks, professional Dagos, profe sional Jews—people who put their ethni origin ahead of everything else. That's wha I meant."
>
> Paras also opposed affirmative action pre grams in an appeals court opinion declarin illegal an admissions policy favoring minor ities at the Law School of the University o California at Davis.●

Senator QUAYLE. Thank you, Mr. Torres.

Mr. Loines?

STATEMENT OF DWIGHT LOINES, NATIONAL ORGANIZATION OF LEGAL SERVICES WORKERS, NEW YORK CITY, AFFILIATED WITH THE UAW AND THE AFL-CIO

Mr. LOINES. Thank you. My name is Dwight Loines. I am here representing the National Association of Legal Services Workers. We are affiliated with the UAW and the AFL-CIO. I am also an attorney in the Harlem Legal Services office, and I have been there since 1976. I can say, quite frankly, that I have never had the opportunity to even attempt to solicit a client. Our doors are always full of people who are coming for legal services, and we never even have the opportunity to consider going out and soliciting people whom we would not normally take as clients.

I am heartened by the fact that legal services over the last several years, with Reagan's attempts to eliminate the program, has in fact survived. I think it is a commendation to the legal services community, to the legal community, to the civic and religious organizations, and the labor unions which have come out for legal services.

For that reason I am particularly saddened to be here today to oppose the entire slate of nominees that you are considering. We are opposed to the slate because of its lack of adherence to the regulations which call for specific types of representations. I am opposed because of the fact that, because of the nominees that you have seen so far, we have nine men, eight of which are white. I would point out to you that at least 35 to 40 percent of the clients who are served by legal services happen to be women. I would also point out to you that a great number of the clients served by legal services happen to be minorities, and we are very sensitive to this issue.

I have not heard anything here today which dissuades us from the opinion that we had, frankly, when we came here, that this slate of nominees is not acceptable.

We specifically object to certain particular nominees. We are opposed to Harvey. We are opposed to Olson, Sandstrom, and Paras for the many reasons that have been given here today. Thank you.

[The prepared statement of Mr. Loines follows:]

STATEMENT OF

DWIGHT LOINES

NATIONAL ORGANIZATION OF LEGAL SERVICES WORKERS, an affiliate of DISTRICT 65, UNITED AUTO WORKERS, AFL-CIO.

I want to thank the Committee for giving me the opportunity to testify on behalf of the National Organization of Legal Services Workers (NOLSW), an affiliate of District 65 of the United Auto Workers, AFL-CIO. NOLSW is the Union which represents thousands of legal services lawyers, secretaries, paralegals and others who work in the local offices and support centers across the country. Before I took a leave from my position to devote full time to the work of NOLSW, I was a staff attorney with South Bronx Legal Services. Thus, I present my remarks today both as a representative of the membership of our Union--the people actually providing the service which Congress has mandated--and as a lawyer who has had a firsthand opportunity to see Legal Services at work for many years.

We have been gratified during the past months by the tremendous outpouring of support for the program from a diverse group of energetic advocates of equal access to justice. You and your colleagues have received messages of endorsement for Legal Services from traditional elements of the legal community--the Bar and distinguished jurists--and from church groups, community, civic, civil rights and labor organizations and others. This support, along with courageous action by the Congress, has helped Legal Services to withstand the Administration's attempt to abolish the program.

It is because of the program's successes in Congress during the past year that we are particularly distressed with the slate of nominees under consideration for selection to the Board of the Legal Services Corporation. We believe that it is no accident that the Administration again seeks to eliminate funding for Legal Services, while hundreds of thousands of poor people are reeling from the impact of the cuts in dozens of social programs. Simultaneously, President Reagan has included amongst his nominees to the Legal Services Corporation Board people whose views and history show direct opposition to the principles upon which our government-sponsored program of free legal services for the poor is based.

While Congress wisely refused to legislate the demise of the program last year and will continue to support funding for it this year, I regret to say that it would now appear that several of the nominations were made for the very reason that the Administration feels compelled to continue its assault in "back-door" fashion, using the Board as its weapon. The White House has established a pattern of attempting to place programs in the hands of administrators whose views are inimical to the very goals of the program they are being asked to head. This would seem to be another such case. In so doing, the principle of access to justice is torn asunder and a clear message is given to the thousands of people who have chosen to give their lives to this work and more importantly to the millions of people we serve. Not only must we fight unscrupulous landlords, consumer defrauders and the like, but we also must worry whether the leaders of our program themselves will be on our side.

In considering the nominees, relevant parts of the legislative history of the Act should be examined. The criteria to be considered includes:

> (1) A board membership which is adequately representative of the organized bar, legal education, the client community, legal services attorneys, and organizations involved in the development of legal assistance for the poor; (2) the selection of persons who are committed to the Corporation's freedom from political control and (3) the assurance that the Board members understand and are fully committed to the role of legal assistance attorneys and support the underlying principle of the legislation that it is in the national interest that the poor have access under law to comprehensive and effective legal services.

The nine nominees before you do not satisfy these criteria. None are representative of legal services attorneys, nor of organizations involved in the development of legal assistance to the poor. In addition, there are no eligible clients nominated. Of the nine people before you, all are attorneys. If you were to confirm these nine, there would only be one eligible client on the Board--a carry-over Carter appointment. Our concern about this inadequate client representation has two bases. First, the Legal Services Act clearly requires that their be at least two eligible clients on the Board. But even more importantly is the broader issue. What was the intent of Congress when it required that eligible clients be on the Board? Important questions which the Board must address--allocation of funds, location of grantee projects, etc.--have a direct bearing on the actual attorney-client relationships. Of course, we would all agree that clients are an irreplaceable part of the decision-making process in those relationships. The Board as proposed would effectively deny such participatory voice to the people who know best what kinds of services are wanted and needed -- the clients themselves.

Beyond technical compliance with the Act and its legislative history however, is the impression which this group of nominees presents to our clients. Of the nine nominated, all are male and eight are white. Our client population is overwhelmingly female and a large number of the communities we serve are predominantly minority. Even if all the nominees were strong supporters of the program, we who have fought to have our workforces and local boards reflect the communities we serve, would have urged you, on this basis alone, to reject the nominations.

Finally, as to the general criteria, none of the nominees has demonstrated a commitment to the Corporation's freedom from political control nor to the underlying principles of the legislation. In fact, five of the nominees are coming from positions which have brought them into direct conflict with the basic principles of the legal services movement. For the reasons described more fully below, we would urge the committee to reject the nominations of these five.

William Olsen, who was apponted interim President of the Board by President Reagan, evidenced immediate contempt for the kind of process we fight for every day. Within hours of his nomination, Mr. Olsen convened a Board meeting on New Year's Eve with inadequate notice to carryover members of the Board and with little or no notice to Legal Services Corporation staff. But more significantly to your consideration are Mr. Olsen's prior connections to the program. He served as head of the Reagan transition panel on legal services. At best, the final product was a lukewarm endorsement of a legal services program not consonant with the one created by Congress. At worst, Mr. Olsen is reported to have urged complete abolition of the program, a position rejected by the full panel. Despite many opportunities to refute the charge, Mr. Olsen has refused to do so. This combined with his on-going relationship with Howard Phillips, head of the National Defeal Legal Services Committee, adds up to a record which should lead this committee to rejection of his nomination.

William Harvey was elected chair of the Legal Services Corporation Board at its meeting on March 4-5. He comes to his position with a record which includes attacks on federal court review of issues critical to the poor and minorities; the writing of amicus briefs against affirmative action to remedy race discrimination; the representation of a suburban Indianapolis school board in a desegregation suit; and the vetoing of $250,000 funding for a legal services clinic at Indiana University when he was Dean. Added to this unfortunate list, he serves on the Advisory Board of the Pacific Legal Foundation. The Foundation is on record as opposed to many of the rights of low-income tenants, and of recipients of welfare and unemployment benefits, for which legal services advocates. This is not just a matter of different political philosophies, but rather actions and the embracing of a political point of view by Mr. Harvey which fly in the face of the needs of our clients. For these reasons, we urge Mr. Harvey's rejection.

Marc Sandstrom's record includes several serious problems. He is Vice President of the Board of the same Pacific Legal Foundation and in this capacity is involved in making its policy. He is also the Vice President and General Counsel of the Great American Savings and Loan Association. The bank has been a defendant in many cases brought by legal services concerning questionable practices of the bank in buying millions of dollars of commercial paper of companies which have sold defective merchandise to low-income consumers. Even were this conflict of interest be cleared up, the underlying facts are such that Sandstrom's connections to them must lead to the rejection of his nomination.

Robert Stubbs is currently Chief Deputy Attorney General of Georgia, a postion from which he makes policy decisions for the government in areas that concern legal services' clients. He has also represented the state in cases brought against the state by legal services lawyers--a classic conflict of interest. One should reflect on how the clients in Georgia would feel about having a legal services attorney representing them while their attorney's "director" is involved in the representation of the opposition. Should the conflict be able to be erased, we would reconsider our position.

Finally, there is George Paras, the nominee who has acted in the most publicly hostile way to the interests of the poor and minorities. His statements have offended virually every disfranchised group that legal services workers serve. Beyond the highly publicized description of "professional Mexicans, blacks, Jews and dagos" when referring to ethnic minorities, more important and telling was his portrayal of the work of Cruz Reynoso, the first Mexican American nominee for a Supreme Court judgeship in the state of California. Mr. Paras wrote: "It is this dedication not to justice and law, but to the poor and oppressed that has prevented you from realizing your potential as an effective judge". The strong inference is that there is a contradiction between dedication to law and justice and dedication to the poor and oppressed. We respectfully submit that dedication to law and justice is synonymous with dedication to the poor and oppressed, especially in an America which stands for liberty and justice for all. Mr.Paras, in the same letter, goes on to say "You must ever champion the 'oppressed' meaning those who so designate themselves, such as criminals, handicapped, welfare recipients, demonstrators, 'minorities' and miscellaneous other have nots". The author of such scandalous remarks cannot possibly carry out the mandates of the Legal Services Act nor ever inspire the trust of the clients or the service providers. Mr. Paras' nomination should be rejected.

While we are anxious to hear the testimony of all the nominees, regardless of what Mssrs. Olsen, Harvey, Sandstrom and Paras say, they will not be able to erase their historical opposition to the needs and concerns of low-income people and minorities in this country.

Many who oppose any of the nominations of President Reagan have been accused of contesting the President's authority to appoint people of his choosing. We acknowledge his right to appoint. But we uncategorically reject his right to appoint people who cannot or will not carry out the will of Congress. None of the nominees has used the months since his appointment to affirm his commitment to the principles on which the Legal Services Corporation was founded or to assure poor people that they reject the President's desire to abolish the program. This should cause great concern to Committee members. In these hearings, you will not just be deciding the fate of these particular nominees, but rather you will be speaking to the millions of low-income people who have been asked to believe that the Courts are where their disputes should be resolved and that the Legal Services Corporations will be their vehicle. NOLSW urges you to take this opportunity to tell the people that Congress remains unswerving in its commitment to the principle of equal access to justice for all,by confirming only those nominees who convince you that they will live and breathe this noble tradition.

Senator **Quayle**. Thank you, Mr. Loines.

Mr. Dorsey?

STATEMENT OF CHARLES H. DORSEY, JR., CHAIRPERSON, PROJECT ADVISORY GROUP, THE NATIONAL ORGANIZATION OF LEGAL SERVICES PROGRAMS

Mr. **Dorsey**. Thank you, Mr. Chairman. My name is Charles Dorsey. I am the chairman of the Project Advisory Group, a nationwide organization of legal services people, and I am here in that capacity. I am also the project director, and have been for the past 12 years, for legal services programs serving poor people in the State of Maryland.

The Project Advisory Group, likewise, opposes the whole panel as nominated for the reason that has been stated: It does not meet the requirements of the act.

We raise particular questions also about those members who participated in the attempted board action on New Year's Eve, if nothing other than raising a question of their judgment. In attempting to do what they attempted to do, they raised questions about all the members who so participated.

We also object to the nominations and the approval of Mr. Paras, Mr. Harvey, Mr. Sandstrom, and Mr. Olson. We also would like to point out to this committee that very careful attention should be given to the very serious question of conflict of interest raised by the nomination of Mr. Stubbs. His nomination raises troubling conflict of interest problems. We think this committee should look very closely at whether he and the other members who have been pointed out as having conflicts of interest will be able to discharge their fiduciary relationship to the Legal Services Corporation.

In closing, I would like to say that we in the Legal Services community are very apprehensive about this whole board that has been nominated and the way in which it has been nominated. We are concerned about the lack of judgment, as we see it, in attempting to do what they have attempted to do up to this point. We urge this committee to discharge its responsibility to the Legal Services Corporation and the people of this Nation to look very closely and very seriously at each of these nominees. Thank you very much.

[The prepared statement of Mr. Dorsey and additional statement submitted for the record follows:]

STATEMENT OF CHARLES H. DORSEY, JR., CHAIRPERSON, PROJECT ADVISORY GROUP, NATIONAL ORGANIZATION OF LEGAL SERVICES PROGRAMS

The Project Advisory Group is the national organization of Legal Services Programs involved in the delivery of legal services to clients eligible under the Legal Services Corporation Act.

We believe that by any objective standard the quest for justice for all citizens of this Nation, and in particular the Legal Services Corporation, are in jeopardy. The enunciated position of our national leadership is the elimination of the Legal Services Corporation, the primary funding mechanism for the provision of legal services to poor people throughout the country. The Office of Management and Budget has urged that no funds be made available to the Legal Services Corporation for FY 1983, and indeed no funding after March 31, 1982. That message is loud and clear. The alternative of services being provided by the private bar alone has been declared impossible by the American Bar Association, and many state and local bar associations.

This position of the national leadership places great responsibility upon the Senate in its consideration of those nominated by the President to serve as Directors of the

Legal Services Corporation. This responsibility, heavy at any juncture, is particularly important at this time when the President is replacing virtually the entire Board. The possibility of treachery and betrayal of the Corporation from within, contrary to the law and in opposition to the will of Congress is a real and present danger.

The Congressional findings and declaration of purpose set forth in 42 U.S.C. §2996 are more pertinent today than ever before, given the great burden thrust upon low income people at this time, and the growing numbers of unemployed and underemployed in the Nation today. There is need to reaffirm the faith of all of us in our government of laws; it is particularly necessary that the Legal Services Corporation, and the offices it funds, be free from the influence of political pressure. It is important that those whom the Corporation serves and those by whom services are provided have confidence in the Board which governs the Corporation.

The composition of the Board of Directors as appointed by the President seriously fails to meet the requirements of §2996c of the Act: ". . . the membership of the Board shall be appointed so as to include eligible clients, and to be generally representative of the organized bar, attorneys providing legal assistance to eligible clients, and the general public." These failings are:

(1) There is no eligible client nominated by the President to serve on the Board.

(2) The Attorney members nominated as a whole do not generally represent the organized bar, which includes minority bar associations and women's bar associations.

(3) There appears to be no nominee representing attorneys providing legal assistance to eligible clients.

(4) The Board as nominated seriously fails to reflect the racial, cultural, and ethnic diversity of our citizens, and seriously underrepresents women.

Because of these serious deficiencies, we urge the Senate to reject the full slate of nominees.

The Board of the Legal Services Corporation, as any board, bears a fiduciary responsibility to the Corporation and its goals as well as to those whom it is charged to serve. The nomination of specific individuals raises serious questions as to whether those individuals are able to discharge that responsibility.

The words of George E. Paras raise serious questions about his qualifications to serve on the Corporation Board. His injudicious public excoriation of a fellow judge for "championing", *inter alia*, the oppressed, the handicapped, welfare recipients, minorities and "miscellaneous other have-nots" demonstrates a contempt and disdain for those whom he would serve. His blithe use of racial epithets are hardly calculated to inspire confidence in anyone concerned with equal justice. His nomination is inappropriate.

The pattern of conduct of William F. Harvey as demonstrated by his frequent representation of school districts attempting to avoid school desegregation, and his brief in the *Bakke* case opposing affirmative action raise concerns about his willingness to support the legitimate aspirations of eligible minority clients.

The position of Marc Sandstrom as executive vice president and general counsel of a California savings and loan association, which is involved in litigation with clients represented by Legal Services funded offices, raises serious conflict of interest questions which disqualify him from service on the Corporation Board.

These circumstances relative to Mr. Paras, Mr. Harvey, and Mr. Sandstrom in themselves raise serious questions as to the ability of each to serve; the close relation which each has to the Pacific Legal Foundation disqualifies each to hold a position of trust in the Corporation. We urge that the Senate reject these nominees.

There is serious doubt whether William Olson, who as leader of the Transition Team for Legal Services issued a report advocating the abolition of the Corporation, will be able to discharge his fiduciary duty to the Corporation and its mission. Mr. Olson's past and present relationship to Howard J. Phillips, an avowed enemy of Legal Services, is further cause for concern. We urge the rejection of the nominee William Olson.

The position of Robert S. Stubbs as executive assistant to the Attorney General of Georgia presents serious conflict of interest questions which must be satisfactorily answered before his confirmation.

The Project Advisory Group has no quarrel with the right of the President to appoint, with the advice and consent of the Senate, the members of the Board of Directors of the Legal Services Corporation. We do remind this Committee and the Senate of its responsibility to assure that the President's nominees are qualified and appropriate to carry out the mandates of the Legal Services Corporation Act. Through its enactment in 1974 the Congress of the United States undertook the responsibility of assuring movement toward the goal of Equal Justice under Law. This responsibility can be discharged only by your serious examination of each of the nominees, and your rejection of inappropriate candidates.

Thank you.

STATEMENT OF THE CHILDREN'S DEFENSE FUND
TO THE SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES
APRIL 26, 1982

The Children's Defense Fund (CDF) is grateful for the opportunity to submit a statement regarding this Committee's confirmation hearings on nominees to the Board of Directors of the Legal Services Corporation (LSC). We wish to express our grave concerns about the nominations of William F. Harvey, William J. Olson, George Paras, and Marc Sandstrom. These nominations contravene the criteria set out by Congress for selection of the Corporation's Board. We consider them a threat to an organization that is critical to the health and well-being of low-income children.

CDF is a national, non-profit charity created in 1973 to provide long-range and systematic advocacy on behalf of the nation's children. We are completely privately funded. We do not receive any Legal Services Corporation funds.

CDF has issued a number of studies of major problems facing large numbers of children in the areas of child welfare, health, education, and child care. CDF seeks to address these problems through the monitoring of federal and state policies and practices, litigation, and public education. In addition, we work with parents and state and local community groups committed to furthering children's interests.

Our specialists have worked closely with legal services attorneys and paralegals. We have come to appreciate their commitment, ability, and integrity, and the importance of effective legal services to the children we both represent. Access to justice is not a luxury for poor children. It is a lifeline.

We are totally opposed to the Administration's efforts to eliminate legal services for the poor. We are equally concerned by the Administration's potential effort to cripple legal services indirectly, by appointing inappropriate or hostile directors.

We have two points we wish to stress in our statement. First, legal services fills a need for poor children that would otherwise go unmet. The continuing survival and integrity of the Legal Services Corporation is crucial to poor children's welfare. Second, the nominations of Messrs. Harvey, Olson, Paras and Sandstrom are inappropriate in light of the purposes of the Legal Services Corporation. They should not be confirmed.

1. Children's Need for Legal Services.

Lawyers make a difference in our system. When legal services attorneys enforce local housing ordinances against a slum landlord, they protect children's health and future. For example, many poor children who live in substandard housing risk lead poisoning from lead-based paint. This condition can cause irreversible damage to the nervous system, convulsive seizures, and mental retardation. Enforcement of local ordinances banning lead-based paint is a major contribution.

Legal services attorneys negotiate utility settlements which keep the heat on and children warm. They represent children in neglect and termination proceedings, where the fundamental question of whether a family should remain together is at issue. They assist handicapped children in getting the services they need to stay in school. And they help clients counter the often negligent, arbitrary or deliberately hostile actions of state agencies administering benefits--AFDC, Food Stamps, Medicaid, WIC--upon which poor children depend. A 1982 study of cases closed by legal services programs showed that over 30% of their caseload consisted of family and juvenile matters.

Legal services lawyers are frequently the advocates of last resort for families struggling to stay together. Without them, benefits to which families are legally entitled often go undelivered. When programs on which the poor depend are being dramatically cut back, it is particularly important that lawyers and paralegals for poor children ensure that those children receive the full benefit of those programs which remain.

If federally funded legal services were eliminated or seriously reduced, or unreasonable restrictions imposed, we believe that voluntary efforts by lawyers could not begin to meet the needs of poor children who depend on legal services for help in the areas of housing, welfare, education, health, and nutrition.

2. William F. Harvey, William J. Olson, George Paras, and Marc Sandstrom Should Not Be Confirmed.

Because of the critical importance of legal services to children, we are particularly concerned that the nominations before this Committee be given close scrutiny. The Senate Committee Report accompanying the Legal Services Corporation Act in 1974 set forth criteria for selection of board members. These include: membership which is adequately representative of the organized bar, the legal education community, legal services attorneys, the client community, and organizations involved in the development of legal assistance for the poor; 2) selection of directors committed to the concept of legal services' freedom from political control; and 3) the "assurance that the Board members understand and are fully committed to the role of legal assistance attorneys and support the underlying principle of this legislation that it is in the national interest that the poor have full access under law to comprehensive and effective legal services." While the nominees' private and professional lives may well have been conducted without blemish, we do not believe that they are appropriate LSC directors in light of the criteria of the law.

Mr. Harvey, for example, has demonstrated less than wholehearted commitment to the concept of legal services for the poor. As Dean of the Indiana University School of Law, Indianapolis, he vetoed substantial funding otherwise available for a legal clinic serving low income clients. Mr. Olson, head of the Administration's transition team on the Legal Services Corporation, reportedly advocated eliminating the Corporation. We do not have access to the transition team's recommendations and therefore cannot confirm or discount this report. If true, however, his nomination would make a mockery of the purposes outlined in the legislative history.

Moreover, even if the transition team did not recommend abolition of legal services, Mr. Olson's subsequent activities raise serious questions about his commitment, required by the legislative history, to the Corporation's independence from political control. As he testified at the confirmation hearing, he has maintained close ties with the White House, and consulted with White House officials about strategy and policy decisions regarding the Corporation. The theory of creating an independent Legal Services Corporation was to insulate delivery of Legal Services from precisely this type of politically charged intervention.

Similarly, Mr. Sandstrom and Mr. Paras have shown little or no sympathy with those who depend on legal services for assistance. As vice-chairman of the board of the Pacific Legal Foundation, Mr. Sandstrom has held a policy-making position with an organization frequently in conflict with the interests of legal services clients. Mr. Paras' remarks about "professional" minorities, reiterated on several occasions, create serious questions about his support for full access to the legal system by legal services clients, over forty percent of whom are members of minority groups.

Conclusion

Legal services play an important role in helping poor children grow up healthy, educated, and secure.
Viewed against these important benefits, it is particularly inappropriate for the Administration to turn the LSC board of directors into a political battlefield with nominees hostile to the purpose of the Corporation. We urge the Committee to apply the criteria formulated in 1974 to scrutinize the nominations carefully, and to reject those that are inappropriate.

NWPC
NATIONAL WOMEN'S POLITICAL CAUCUS
1411 K STREET, N.W. WASHINGTON, D.C. 20005 (202) 347-4456

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VICE CHAIRS
Anita Bonds
Sally Lunn
Irene Natividad
Amalia Dip
Sharon Macha
TREASURER
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Jean Harder
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Dorothy Height
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Coretta Scott King
Odessa Komer
Anita Lang
Frances Lear
Norman Lear
Kate Rand Lloyd
Olga Madar
Sally Martin
Willard McGuire
Jane Pierson McMichael
Doris Meissner
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Midge Miller
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Esther Peterson
Lola Redford
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Sharon Percy Rockefeller
Audrey Rowe
Jill Ruckelshaus
Patricia Schroeder
Felice Schwartz
Mary Louise Smith
Gloria Steinem
Marlo Thomas
Marietta Tree
C. DeLores Tucker
Lucia Valeska
Carmen Delgado Votaw
Maxine Waters
William Winpisinger
Bonnie Wong
Danya Van

April 20, 1982

The Honorable Orrin Hatch
Chair
Senate Committee on Labor and Human Resources
United States Senate
Washington, DC 20510

Dear Senator Hatch:

Attached is the statement of the National Women's Political Caucus regarding the nominations for the Board of the Legal Services Corporation. I request that this statement be placed in the hearing record in its entirety.

Thank you for your cooperation.

Sincerely,

Kathy Wilson

Kathy Wilson
National Chair

Attachment

KW/yp

NWPC
NATIONAL WOMEN'S POLITICAL CAUCUS
1411 K STREET, N.W. WASHINGTON, D.C. 20005 (202) 347-4456

STATEMENT OF THE NATIONAL WOMEN'S POLITICAL CAUCUS

April 21, 1982

SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES
NOMINEES FOR THE BOARD OF THE LEGAL SERVICES CORPORATION

Senator Hatch and members of the Labor and Human Resources Committee, thank you for the opportunity to submit this statement for the hearing record on the nominations for the Board of the Legal Services Corporation.

The National Women's Political Caucus, for which I serve as National Chair, is a nationwide, multipartisan organization with 60,000 members and 300 state and local Caucuses across the country. The NWPC is dedicated to obtaining equal representation of women in elective and appointive office--the offices that make public policy for our country. In 1977 the NWPC established a Women's Appointments Project--to recruit and promote qualified women for high-level positions in the Executive Branch. It is this concern for the appointment of women that prompts us to submit this statement today.

We at the National Women's Political Caucus are alarmed that among the nominees to the Board of the Legal Services Corporation considered here today, there is NOT ONE SINGLE WOMAN. We may differ, Senator Hatch, on the need for a federally funded program of legal services for the indigent. We do, I believe, share a commitment that programs and laws, as long as they are mandated by statute must be upheld. But the Board being considered by this committee which will have the authority to set standards and policy for the Legal Services Corporation, in effect betrays that commitment.

We feel alarmed because 67% of the clients served by the Legal Services programs are women. I doubt that this comes as a suprise. It is widely recognized that women are the poorer sex, and disproportionately represented at the lower end of the economic scale. They represent nearly two-thirds of the total poverty population. Women are more than three times as likely as men to be earning between $3,000 and $5,000 per year. One out of seven families is headed by a woman, and five times as many female headed households live below the poverty line as male headed households.

The failure to nominate even one woman to serve on the Board of a program whose clientele is more than two-thirds female demonstrates an Administration superficially informed about Legal Services and lacking in sensitivity to one-half of this country's population. That the vast majority of the program's clients should go completely unrepresented is careless and unnecessary.

The kinds of problems which Legal Services attorneys deal with further affirms the need to have women represented on the Corporations' Board. The 5,000 lawyers working in over eleven-hundred neighborhood and community offices across the country (often at modest salaries which I dare say would deter many a law school graduate) are primarily concerned with family, income maintenance and housing problems. Family matters constitute nearly one-third of all cases handled by LSC attorneys, and are by far the most common of all client problems. It is clear that women's concerns are a significant part of LSC caseload. Income maintenance is the third most pressing issue for LSC attorneys (closely behind housing) and with 90% of AFDC recipients being women and their dependent children, this portion of the program's cases are, again, predominately women's issues. The median income for women over 65 is a mere $4,226 derived primarily from social security. Income maintenance is close to 20% of the cases handled by field attorneys, and it is apparent that older women's issues are dramatically reflected in the program. I fail to understand how the Administration can overlook the kinds of issues handled by the program attorneys.

Finally, I wish to address one additional aspect of Legal Services which heightens its importance to women. Legal Services is the largest employer of women attorneys outside the federal government. Thirty-nine percent of all the LSC attorneys are female: they constitute 24% of all staff attorneys, 22% of the managing attorneys, and 11% of all executive directors. Further, legal services, with its extensive use of para-legals, has provided an important source of employment for women seeking a way out of dead end support positions or reentering the labor market after years at home. Sixty-eight percent of the program's para-legals are women, clearly an impressive employment opportunity for women with this highly marketable skill.

We urge you, Senator Hatch and the other Committee members, not to confirm all of the nominees here today. Further, we urge you to encourage the President to forward the names of qualified women, including minority women with a demonstrated commitment to Legal Services as candidates for the Board of the LSC. We are confident there are potential women candidates who are highly qualified, willing and able to serve on this important Board. Only in this way will the Legal Services Corporation Board more accurately reflect the people it was designed to serve and fulfill its Congressional mandate.

Senator **Quayle**. Thank you very much, Mr. Dorsey.

As Mr. Dorsey and Mr. Veney both point out, it is a challenge to evaluate all these members in good faith and with our consciences. We certainly appreciate your testimony and your sincerity in the work you have done. Your testimony in its entirety will be incorporated into the record, and I can attest that I and others will examine those comments.

I will just say that I do not know all the board members personally, but I do happen to know Mr. William Harvey personally. I would say that those who are opposing him just simply do not know the man as I do. I cannot speak for the other individuals as well as I can for Bill Harvey, but I can speak for him from a personal and professional basis. I would like for the record to show that.

The committee will stand adjourned.

[Whereupon, at 1:25 p.m., the committee recessed, to reconvene at the call of the Chair.]

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